Mr. Hunt's ARGUMENT

FOR THE

Bishops Right:

WITH THE

POSTSCRIPT.

With some Additions.

TOGETHER WITH

Two Discourses about the *Succession*, and Bill of *Exclusion*.

IN ANSWER

To two Books Affirming the unalterable Right of *Succession*, and the Unlawfulness of the Bill of *Exclusion*.

In turbas & discordias pessimo cuique plurima vis; pax & quies bonis artibus indigent. Tacit. Hist. l. 4.

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TO THE

RIGHT HONOURABLE, *JOHN*, Earl of *RADNOR*, Viſcount *Bodmin*, Lord *Roberts*, Baron of *Truro*; And Lord Preſident of His Majeſties moſt Honourable Privy Council.

My Lord,

THE Reaſon that moved me to inſcribe theſe following Diſcourſes to your Name, is to create a prejudice, and beſpeak a good eſteem with all Mankind to whom your Lordſhips Character is arrived, of my Integrity and Sincerity therein. Your Lordſhips free and open Acknowledgment of your ſelf to the World, That

you have liv'd your inward Nature, That you never diſſembled or diſguiſed your ſelf, avowed plainneſs, and deſpiſed all Arts, Intrigues, and Applications, hath made your Lordſhip Univerſally Honoured every where, and by all ſorts and parties of Men entirely truſted; and you are become an Illuſtrious inſtance, That nothing is ſo popular in a Noble Perſon, as Simplicity, and open Sincerity; no, not Bounty and Beneficence it ſelf, to which Office likewiſe your Lordſhip is not indebted, or in any arrear. A great Moraliſt preſcribes and commends to all Men that would hold on an uninterrupted Courſe of Virtue, and preſerve their Innocence, to put on Σκληρότητα as a Defenſative and Out-guard to Virtue; That is to ſay, a ſtiffneſs and inflexibleneſs of Mind, ſomething that can reſiſt thoſe ſoft and gentle prejudices that perſwade undue compliances, and abuſe the facile, weak, and tender Minds to accommodate themſelves

ſelves in little Matters to the preſent occaſions, until by little and little, ſincerity is almoſt quite periſhed from the World, and miſchiefs apt to deſtroy it ready to follow in conſequence of ſuch unmanly compliance. Men to relieve themſelves from inward Reproach whilſt they contradict their inward ſenſe, have found out the ſpecious names of Civility, Submiſſion to our Superiours; Nay, have Uſurpt the Glorious name of the Virtue of Modeſty (which is the Nobleſt and moſt ample Virtue, which gives Rules that are almoſt comprehenſive of our whole Duty; for to this Virtue we owe a greatneſs of Mind, and a reverence of our ſelves, as well as equability and Juſtice to others,) to varniſh over Diſſimulation, Craft, Hypocriſie, Flattery, Treachery, Falſhood, and a deceitful Converſation: And are bold to Reproach the ſeverely Honeſt with the Names of Moroſe, Diſloyal, and Diſobedient, to turn off from themſelves

the ſhame of their own prevarications and utter defections from Publick Intereſt; which God knows Men eaſily ſlide into inſenſibly, if they once ſuffer themſelves for any regard whatſoever to be carried off from the Rule of Right: for they bring themſelves under ſome kind of Neceſſities of complying with the Evils their firſt aberrations occaſioned, by greater faults, which increaſe reciprocally at every turn, until they become deſperate Out-laws, abſolve themſelves from all Duty they owe to their King and Countrey, abandon themſelves to Chance, to live and ſubſiſt by untoward ſhifts and Arts, which increaſe their firſt Guilts, and turn their Errors into unpardonable Crimes: Having Ship-wreck'd their Conſciences, they care not if the Government be wreck'd too, to which they have made themſelves ſo very obnoxious.

Thus whilſt Men pleaſe others they loſe themſelves, and from Flattery it is eaſily proceeded to the moſt miſchievous Treacheries. *He*

He that deſpiſeth his own way, ſhall dye, ſaith King *Solomon*. A Man that accommodates himſelf to ſerve Occaſions, diſſembles himſelf, and appears other than he is; will ſoon extinguiſh his Conſcience, and dye to Virtue: he that doth not honour himſelf, will not regard Men; and they that do not Reverence Men, will not fear God: *Qui non verentur homines, fallent Deos.*

The Arts of Complaiſance ſo much relyed upon at the Courts of Princes, hath extruded the Laws of Honeſty thence, where they are moſt neceſſary. This hath made the Condition of great Men very uncertain and fortuitous, infinitely Subject to Chance and Hazard, the Thrones of Princes unſtable and tottering, and left the Peace and Security of Kingdoms ſcarce at any time undiſturbed with Fears and Jealouſies, evil ſurmiſes, and contending Factions, upon Reaſons true and falſe, real and feigned cauſes. Every Man almoſt is ſometimes complaining of the uneaſie con-

condition that he himſelf concurs to make to himſelf, but is always in ſome ſort miſerable by fearing from others whom he gives too much cauſe to fear from himſelf, and to miſtruſt him for his double dealing. But what other conſequence can they expect, that ever feign, and unceſſantly diſſemble, but not to be believed, not to be truſted, hated for their baſeneſs, and feared for that great Evil they would diſſemble. The greatneſs of the Evil deſigned, is juſtly meaſured by the coarſe and baſe Artifices they uſe to hide them: They are impudent to all the diſcerning and wiſe, whilſt they buſily ſet themſelves by mean and baſe Arts to abuſe the Fools and inconſiderate, the vain and the credulous; whom they have at the ſame time in the greateſt ſcorn, whilſt they have nothing to value themſelves upon, but that ſuch little Men are deceived by them.

But

But there is another ſort of Men that deſign well for the Publick, whilſt they diſpenſe with the ſtrict Laws of Truth and Sincerity. But I cannot tell upon the whole Matter, whether they are not more hurtful to themſelves, than profitable to the Common-Wealth, by their well-deſigned and honeſtly-directed compliances and diſſimulations. I mean, ſuch Men as lend themſelves to the Service of the Publick; who are ſo kind as to diſfigure themſelves, to take other ſhapes and appearances of what they are not: Who are content to neglect their Honour and Reputation of Sincerity, whilſt under a feigned aſſentation they hinder all the evil, and do all the good they can do, and the preſent ſtate of things will permit; and ſuffer the reſt with a great compaſſion for the Publick Weal. But ſuch Mens Praiſe muſt come from God, their Honour will never be entire amongſt Men; and after all the difficult and hazardous Ser-

vices

vices they can perform for their King and Countrey, their Honour will ſtill remain ſuſpected, doubtful, and obſcure amongſt Men, who muſt judge according to appearance. When we have been often abuſed by the faireſt pretenders to a regular and conſtant Virtue, we cannot eaſily truſt thoſe that have ſometime diſſembled and repreſt it.

My Lord,

It is a peculiar Felicity of your Lordſhip, that from a Generous and Honeſt Nature, and a Noble Mind, rather than from the inſtitution of Books (though your Learning is famouſly great) to which you ſeem made rather than inſtructed; your ſincerity is incorruptible, and ſtands in no need of that Artificial Defenſative and Outwork which is preſcribed by great Moraliſts as neceſſary to weak Minds to ſecure their Virtue, eſpecially when Virtue it ſelf is out of Repute and diſgraced. You

You have perſiſted conſtantly in one even Tenor of Life, have been Uniform, Regular, and Conſiſtent with your ſelf. There may have been ſome complyance in appearance to your Lordſhip, but you never yet departed from your ſelf; nay, you have not ſo much as incur'd the ſuſpicion of ſo doing. No Man makes any Queſtion about your Lordſhip, or what it is you deſign; it is no Mans Enquiry, no Mans doubt: You have been always the ſame, and are, as every Man concludes, immutably ſo. You are not unhappy to paſs under Conjectures and various Opinions, there is no need of a Cryptique Man to unriddle any intricacies in the Courſe of your Life.

Votivâ pateat veluti deſcripta Tabellâ
Vita ſenis.

No falſe inſinuations can hurt your Name: No Service but what is Juſt will

will ever be impoſed upon you; no Myſteries of Iniquity will be committed to your Breaſt: no Man will be offended at you, but he that hath reaſon to be diſpleaſed with himſelf, and takes himſelf in a ſort reproved by every honeſt Man, as every Man doth that condemns himſelf. You cannot be diſgraced by any Faction, but a real diſhonour will return upon thoſe that attempt it: Every honeſt man will be ſenſible, if you (being reckoned and eſteemed a Publick Good) are leſſened: And you cannot fail of Honour from the worſt of Men, when in Honouring you they Honour themſelves, and honeſtate their deſigns.

My Lord,

You repreſent to us the Condition of the Nation not deſperate and incurable, whilſt you preſide in His Majeſties Councils: for no Man can believe you would be an unconcerned Spectator of our Ruine, or the Preparations

to

to it; or that you would contribute any thing thereto, by giving us a vain Confidence of a ſecure condition, and ſuffer your fam'd Integrity to be Suborned to ſo miſchievous a Deceit.

My Lord,

Your Lordſhip hath afforded a mighty recommendation of ſincerity and ſimplicity to the Practice of the World; you have Honoured thereby the Age wherein you live, acquired true Honours to your ſelf, and are thereby become a Publick Bleſſing. I hope I ſhall have your Lordſhips Pardon in making a further advantage of your Lordſhips Noble Integrity and Wiſdom, by preſuming to offer theſe Sheets to your Lordſhips favourable Judgment. That I adventure to appear to ſo great a Judgment, is the beſt Argument I can uſe to the World for my Integrity and honeſt deſignment therein; and beſides, the good Opinion of ſo great a Man as your ſelf, would give great aſſurance to my own Conſcience.

ſcience. If your Lordſhip doth think any thing therein uſeful to the World, I am ſure it will have your Lordſhips Countenance, which will make them more uſeful, ſince, as my Lord *Bacon* obſerves, *The Cauſe of Laws, and Defence of the ancient State, hath ever found this Priviledge, That ſuch as for their own Intereſt diſturb the ſame, Excuſe (if they Honour not) their Defenders.*

My Lord,

I ſhall ever pray for increaſe of Honour to your Lordſhip, and that full of Years you may change this Life for a better; to which I am bound, for that I eſteem you a Publick Good, if I had no particular Obligations (as I have) to your Lordſhip; and for the greateſt Reaſon I take my ſelf Obliged to be in true Honour of your Lordſhip,

My Lord,
Your Lordſhips
Moſt Obedient Servant,
THO. HUNT.

THE PREFACE.

THis Argument for the Biſhops Right of judging in Capital Cauſes in Parliament, for their being one of the three States of the Realm, and that their Right is unalterable by Law, was written above two years ſince, and prepared for the Preſs, time enough to be made publick againſt an expected Seſſion of Parliament, in October 1679. *But the Parliament being Prorogued from that time until* January, *the Author was willing to reſpite the Publication to adviſe with his ſecond thoughts, and again to review what he had written in a caſe of this weight and moment; and the rather, for that he had but a ſhort time allowed him for its compoſure. Since that there has been publiſhed by an excellent Perſon, a Book in Vindication of their Right of judging, called* The Grand Queſtion, *ſufficient to give ſatisfaction, if the World were juſt and impartial, and diſpoſed to make right Judgment in the Cauſe.*

It may well be reaſonably expected that Chriſtian People ſhould not be only juſt, but favou-

rable to any pretence of a Christian Bishop to any secular trust that does not lessen the dignity of the Office, and seems not unworthy of his Character; which as it exempts him from mean and sordid Offices and affairs of an inferior and more private concernment, so it commends him to the Government of matters of a more publick and universal influence, such as require the most improved wisdom and learning, and a noble virtue.

It seems to me most unreasonable that those that are the great and principal Expounders of the Christian Law, which gives Law to all Laws, and instructs men to discharge their several Offices both publick and private; that those who are the great Guides of our Consciences, and by whose Directions and Institutions we form our Judgments in the greatest intricacies and doubts that perplex humane affairs; that the Guides of a Religion which is formed all to life and practice; for the making Governments equal, and private men good and obedient, which is little else but an Obligation to Justice and Charity, and principally pursues that which is the end, design, and whole business of Government: I say, it seems to me most absurd and incongruous, that this Order of men at any time ought to be shut out of that Council and Court, where Laws are made, and Rules given, for the Government of a Christian Common-wealth, where the most difficult and intricate causes are to be heard and determined;

determined, and where an unlimited power remains of cenſuring the Actions of the greateſt men; and the adminiſtration of publick affairs, and the ſafety of the Nation are conſulted, which cannot be long preſerved but by purſuing the dictates of a wiſe Religion: Such is the Chriſtian Religion; if any other, we ſhould diſhonour it by comparing it to the beſt.

Paganiſm became deſpicable and abandoned ſoon after its publication: Yet Tully *in his Oration* ad Pontifices, *magnifies the wiſdom of the* Romans *as Divine, in advancing the* Pagan *Prieſts to the higheſt places in their Common-wealth, by which the Common-wealth he ſaith was preſerved.* Cum multa Divinitùs, Pontifices, à Majoribus noſtris inventa atque inſtituta ſunt, tum nihil præclarius, quam quod vos eoſdem & Religionibus Deorum immortalium & ſummæ Reipublicæ præeſſe voluerunt: Ut ampliſſimi & clariſſimi Cives Rempublicam bene gerendo, Religiones ſapientèr interpretando Rempublicam conſervarent. *Such an Opinion more duly and with better reaſon our Anceſtors conceived of the advantage that might accrue to the Nation by advancing the Prelates of the Church into the Civil Government. Thereupon they have made them neceſſary to it, and framed the Government in a ſort to depend upon them, and left it ſcarce able to maintain it ſelf without them in its preſent conſtitution. The Temporal Barons will ſoon find themſelves unable to maintain their own Dignity, and to ſuſtain*

that Province that is allotted to them in the Government, unassisted with the Interest and authority of the Prelates, the Spiritual Barons, a mighty Power if they be, as they ought to be, of venerable esteem with the People.

If the present Bishops are not all so happy as to posses such an esteem, we know what cause to assign for the same, viz. *the unhappy Schism, that hath too long continued in our Church, hath, for its own Justification after they are almost sham'd out of the scruples which first caused the Separation, sought occasions against the Persons of the Bishops; and rather than they will want faults to complain of, the Order it self must be loaded with all the faults of all the Bishops in all Countries and Ages, and they adventure now to disparage their persons for the sake of their Office. But sure it is a folly that can fall upon no People, but such who by the evils they feel or fear, are vext out of their understanding, to suppress any Office that is necessary to any Common-wealth in any form of Government, for the faults of the Officers for the time being.*

But too true it is, that a form of Government while established, may be so utterly misunderstood by the most, when it is not, or not duly administred, that a true and exact description of it, and a discourse of the Offices and Functions of the several parts of the Government would be taken by them for some Utopian *Common-wealth, or no better please them than a description of the strength of an impregnable Fort, once the*

Security

Security of the Nation when inveſted by the Enemy. A Lecture of a Learned Phyſician of the Uſus Partium *will not give ſight to a blind Eye, nor motion to a withered Hand; and no body is warmed or comforted by a painted fire: But God be thanked we are not yet deſtitute of the benefits of a good Government.*

Another cauſe which I apprehend may much leſſen the Biſhops in the eſteem of the People, and make them want that Reputation that is neceſſary to every Governour in proportion to his Charge, Is their manner of promotion. The Miniſters of State, whoſe buſineſs it ought to be to underſtand the true Characters of men that are preferred to that Office, are often miſtaken; however in this Courſe they ſeem not to be promoted for their own Merit, but at the pleaſure of the great Courtiers, and at beſt the Miniſters of State can do no more than recommend to the King for that Office the beſt of thoſe they know, which are many times moſt unfit.

But this may be remedied when His Majeſty ſhall pleaſe to give leave to the Clergy of the Dioceſs to chooſe their own Dioceſan, their Choice notwithſtanding ſubmitted to the Kings approbation and Confirmation (which was permitted by Juſtinian *the Emperour, and was in uſe in ſeveral of the beſt Ages of the Church) or by ſome other Method which may be adviſed by his great Council, whereby the greateſt aſſurance may be given that the beſt and fitteſt perſons be preferred*

to Biſhopricks: For the Common people are envious and ſuſpicious, and what ever may be done by bad means they always think it ſo. But if Biſhops were promoted to their Sees with the gratulations and applauſes of the whole body of the Clergy of the reſpective Dioceſſes, all that paſſeth under their advice and conſent would likely meet with the general ſatisfactions of the People, as it would well deſerve, as long as the Clergy can have any Authority with them; That is, as long as the Nation continues Chriſtian.

But the general Corruption of Manners and decay of Piety is the great and trueſt cauſe why the Biſhops unenvied enjoy no part of that Honour that our Anceſtors Wiſdom and Piety conferred upon their Order conformably to all other the Ancient Chriſtian Governments. But when Virtue and Piety ſhall recover their eſteem, the Reverence of the Clergy will return. We are not like long to expect this happy Change, for Vice is now arrived to a Plethora, *and like to burſt by its own exceſſes: And we well hope that the miſchiefs which we ſuffer will cure that evil from whence they ſpring, and prevent the greater Calamities that it further threatens. However it becomes all good men to aſſiſt, to ſupport the preſent Government, which is the cheapeſt, the ſureſt and the next way to arrive at a happy conſtitution of things.*

This was the deſign of the Author of the Grand Queſtion. After the publication of that Book I laid by

by all thoughts of publiſhing this Treatiſe: But perceiving that notwithſtanding what he hath ſaid, the Right yet remains controverted, and a Book is ſince Printed, wherein ſeveral things are objected in prejudice of this Right, and more is expected: I did review theſe Papers, wherein I found I had prevented thoſe Objections, and with a little application they would appear inſignificant. I did reſolve to make this publick.

And beſides that I apprehended ſome things material to the Queſtion were omitted by the Grand Queſtion; that a ſeveral way of ſpeaking things to the ſame purpoſe hath its advantage. Our great Courts affect to have ſeveral Arguments on the ſame ſide in great Cauſes, and our Reporters publiſh them. Beſides herein ſeveral things are occaſionally diſcours'd of, which makes it of further uſefulneſs to the publick. Our Adverſaries alſo were treated too kindly by him, and had deſerved ſharper reflections than he makes upon them for their falſe and perverſe Reaſonings, and ought to loſe that Reputation which they abuſe to the hurt of the Government. And further, I thought it not for the honour of our faculty that never fails to ſupply the worſt cauſe with Advocates, That a queſtion of this Nature, wherein both Church and State, Religion and our Civil Policy is concerned, and the Right thereof not only clear and evident in it ſelf but alſo uſeful to the State, ſhould have not one of the Robe to plead for it.

The Friends of the Cauſe will not grudge to read two Books for the Right as well as ſeveral againſt it, and the Adverſaries of our Cauſe ought to ſuffer the like trouble themſelves which they occaſion to others.

Theſe Conſiderations did induce me to publiſh this Treatiſe. I am well pleaſed that I am ingaged in a good Cauſe that was ſuited to one of my ſlender Abilities. Right is ſo ſtrong an Argument for it ſelf, that it wants only light to diſcover it: Whereas an unrighteous Cauſe ſtands in need of diſguiſings and ſhadowings, and all the Artifices and fetches of the Wit of abler men, to give that a Colour, at leaſt, which is deſtitute of Law and Right.

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to

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Chap. XVII. *How we recovered out of the inconveniencies of that Constitution of Parliament, which was made up of the Baronage at that time By representatives in the time of* H. 3. *appointed to be Chosen for Counties. And that this (it being allowed) can give no countenance to those that are desirous to change our present and better Constitution. That in all this Change the Bishops suffered no diminution. But when the ancient reason of Baronage failed, they are after to be considered under the new reason of Baronage. Of the* Barones majores & minores, *and the* Barones Regis & Regni, *King* John's *Great Charter explained, and Mr.* Selden's *Arguments for placing the Change of our Parliamentary Constitution in King* John's *time answered.*

Chap.

Chap. XVIII. *The remembrance of the old reaſon of Baronage became a prejudice in the Judges, upon which* T. Furnival *Plea allowed, that he held not* per Baroniam. *An Entail of Baronies with Lands after allowed. The reaſon of Nobility changed, and no man now Noble by his Acres. Many men Summoned to Parliament, and yet not Noble. No prejudice to the immovable Right of Biſhops to have Summons to Parliament, and that objection anſwered. Kings may erect new ſucceſſive Nobility in Clergy-men. That Biſhops are of a diſtinct ſort of Nobility, and under that and other reaſons they are conſidered as a diſtinct State.*

Chap. XIX. *Of the three States which make the Government under the King, that he is none of them. The Objections againſt this anſwered. And the reaſons of their being diſtinct, and the ſeveral Offices and Expectances in the Government that make them ſo.*

That the ſeveral Orders of Peers make but one Baronage, and in that there is a great Truſt, and honour greater belongs to Biſhops than Lay Barons in our preſent conſtitution. Their Character and Qualifications commend them to the higheſt truſt, and render them fitteſt Judges.

Chap. XX. *The reaſon of Tryals* per Pares, *and that the Biſhops are competent tryers of Peers, upon that reaſon in Parliament, though not ſo fit to be of the High Stewards Court. The Law of* M. Charta *not* Lex ſcripta. *Biſhops ought to be Tryed*

Tryed by their Peers. How that Right came to be discontinued, and that in Parliament they ought still to be Tryed by their Peers.

Chap. XXI. *The unreasonableness of maintaining an Opinion upon a single Objection against a matter evidently proved, that Questions of this nature should be considered with Candor, and not opposed with meer possibilities.*

Chap. XXII. *Several alterations in the Government since the Conquest, that the Alteration in what concerns the Baronage, the Bishops Right is to be considered in analogy to the Change.*

That changes of Government for the better cannot again by altered, but our zeal is required to defend the Government made better, and they deserve ill that go about to reduce us to our old mischiefs by their Antiquity.

Chap. XXIII. *The advantage of the Change in the constitution of our Parliament, in the change of granting Subsidies. And how the Lords are bound by a Bill of Aids.*

Chap. XXIV. *The beneficial Change that hath been made by the clause* præmunientes *in the Bishops Writs of Summons to Parliament, which gives Authority for the Convocation. By this we are discharged of Provincial Councils, and Canons of the Church kept distinct from Laws of the State. The Church kept in Peace from rending Questions, and Religion is conducted not by Laws but by Canons, not force but perswasion, which commends our Episcopal Government.*

Chap.

Chap. XXV. *The danger we avoided of having our Baronage of* England *ambulatory, and fixing of it in Families and an indefectible Succeſſion, in which the Right of the Peerage of Biſhops is eſtabliſhed.*

Chap. XXVI. *The Advantages the Adverſaries ſeek to their cauſe by aſperſing the Biſhops. Remembrance of all the faults in all times committed by any of the Order, that many of thoſe faults are principally due to the Papal Uſurpation, and the neglect of Kings to defend the Rights of their own Biſhops, and are all the* Vitia Temporum *the times of Popery.*

Chap. XXVII. *How inculpably our Biſhops have been in adminiſtration of their Eccleſiaſtical Authority, how faithful in their Temporal Truſt, and Aſſerters of the Rights of the People. They have not been irreverent to Kings, nor have they encroached any Power in Civil matters* in ordine ad ſpiritualia. *That the Power that they challenge is meerly Spiritual, and they challenge nothing of Divine Right but the exerciſe of their Miniſtry, which they cannot lay aſide. Mr.* Selden's *Arguments for Eraſtianiſm anſwered. The Church of* England *doth not tye her ſelf always to think and enjoyn as ſhe doth at preſent. The moderation of the Church in Opinions, her apprehenſions of Schiſm juſt and great.*

They are not anſwerable for the ejectment of the Non-conformiſts, nor for the ſcandalous Lives of their Clerks, nor their Chancellors, nor abuſe of Excom-

Excommunications. Why matters of Incontinency are committed to their censures. They have exercised the Power of the Keys against the Infractors of M. Charta, *and how it hath been guarded with the denunciations of the Church, we have reason to expect as much from our Bishops to support the Government of Laws.*

Chap. XXVII. *There is as much reason that the Protestant Bishops should be as constant to the Reformed Religion, as Popish Bishops obstinate for Popery. An Apology for their Unanimity in Voting. Their dependance not so great upon the Crown, as to oblige them to disserve their Prince. The King bestows nothing upon them but what is the Churches, the great expectation the Government hath of their fidelity and performances. That which advanced them must continue them great. The contempt of the Bishops and Clergy the great cause of our evil State at present; out of which we cannot recover but by an excellent Clergy and a high esteem of them with the People.*

THE

The Argument.

CHAP. I.

IN this queſtion the Conſtitution of the Government is concerned, and the Right of a moſt principal conſtituent part, and that in a matter of the higheſt Truſt, which if truly a Right, can be no more relinquiſhed (as the Nature of this Right is) than a truſt can be betrayed, a duty and a Right denyed to be paid and performed, or the Conſtitution of the Government changed.

For of ſuch a Nature doth appear to be the Right in pretence and Controverſie, of the Lords

the Biſhops to have judgment in the Houſe of Lords in Capital Cauſes.

For by their being made Barons, they owed their judgments in ſuch Cauſes as a ſervice to the King, at firſt by their Tenures in Baronage: and though ſince they are become *Barones Reſcriptitii*, or Barons by Writ, their duty is not abated. And beſides, the Cogniſance of ſuch Cauſes became their own Right, being a part of and belonging to the dignity and office of a Baron. And it likewiſe became an appointment in the Government, in which the whole Community have their Intereſt, which is principally provided for and procured in all Governments, whoſe greateſt concern it is to have Juſtice done againſt all Criminals; and to have great and wiſe, juſt and good men in the Adminiſtrations of Juſtice, and other great offices of the Government.

The people of *England* did anciently underſtand the benefit of this Conſtitution, when nothing but the Baronage of *England*, the Lords Spiritual and Temporal, could reſiſt the Torrent of Arbitrary Government. And it may be eaſily underſtood too, that nothing but the Baronage of *England* is able to ſupport the Throne: For that Monarchy, unleſs ſo ſupported, is the weakeſt and moſt precarious and dependent Government in the World, except it be ſupported with an Army, and turned into a Tyranny. That the Throne ſhould be eſtabliſhed by Natural and gentle

gentle proviſions, and the Government fixed is every mans greateſt intereſt.

If the Lords Temporal had more under command, and a larger *Poteſtas jubendi*; yet the Lords Spiritual out-did them *Authoritate ſuadendi*, and had more voluntary obedience. The Lords Spiritual have ſeveral Advantages as they are *Novi homines*, men choſen out of Thouſands for an excellent Character and Spirit, and need not want any accompliſhments, if duely choſen and preferred, for the diſcharge of the greateſt Provinces that are to be managed by wiſdom and integrity; and therefore they cannot be well wanted in any Miniſtries in the Government, to which they are beſpoken, and have a legal deſignation.

Since this Authority by the very opening of the Cauſe doth appear probably belonging to the Biſhops; and it ſo, that they cannot, without breach of their duty that they owe to all the parts of the Government and the whole Community, depart from it; it may ſurely be inſiſted upon, diſputed and maintained by them without blame or imputation. But ſo unhappily it fell out, that the very diſputing and contending of this Matter by reaſon of the unſeaſonableneſs of the diſpute, and the delays that were thereby given to the moſt important buſineſs of the Nation, to the great hazard as ſome think of the ſumm of Affairs, was very miſchievous to the publick. And now both parties

are charging one another with all the miſchiefs and the delays, that this Controverſie hath given to publick proceeding, or can with any probability be thought to have occaſioned. And there are not men wanting, on either ſide within doors and without, that are forward enough to charge the blame of all thoſe miſchiefs as deſerved by their oppoſite party, which may eventually happen hereupon.

Who ſees not how fatal this Controverſie is like to prove to one or other of the Litigants, and to the Government in conſequence, if this Cauſe cannot be duly heard and conſidered, and be determined upon its own Merits, without undue Cenſures and Reflections on either ſide? Since at laſt the contenders themſelves muſt be the Judges, and give Judgment in the Cauſe, or it can never be quieted and have an end. I am ſure, Paſſion is no equal Judge and Arbiter, and men angred and provoked have not the ſame ſentiments of the ſame things, as when calm and ſerene. And becauſe there is no common Judicature, it ought to be conſidered by both parties with all equality of judgment and an exact pondering and weighing of the reaſons offered on either ſide; for that otherwiſe it can never be fairly decided, but muſt ever remain a Controverſie to the immediate overthrow and deſtruction of the Government, or over-ruled by force and Power of a moſt dangerous conſequence in the courſe of time, to the Government; This will be a laying

of

of the Axe to the very root of the Tree, it will put the Government it ſelf into a State of War, between the ſeveral conſtituent parts of it, and give an occaſion for one part to uſurp upon another, until the tone and frame of the Government become changed, and at laſt fall into ruine.

I am very well aware of the gravity of the Queſtion and its importance, the high honour and regard that is due to the Houſe of Commons in Parliament, what commendations are due to them in their perſons, for their zeal and endeavour by all means if it be poſſible, to ſave the Nation, Religion and Government: And what a great Capacity, that Houſe in its very conſtitution, in the firſt deſignation of the Government, and by their mighty growth in power and intereſt in the Courſe of time, have in procuring the publick good, and that they cannot have any intereſt divided from the common Weal. I muſt do them right, and with the greateſt clearneſs and ſatisfaction, I determine with my ſelf, that their zeal for publick Juſtice againſt unpardonable offences in their judgment, and a prejudicate opinion they had conceived of the Spiritual Lords unindifferency (how duely will appear by and by) gave the firſt occaſion to this Queſtion, which was the true *cauſa ſuaſoria* of their denyal to the Biſhops a Right of Seſſion and Judgment in that noble Queſtion, Whether a Treaſon of State can be pardoned? And that put them

upon the ſearch of Precedents, an Oracle that will always give a *Reſponſe* agreeable to the Enquirer and Conſulter. For I am ſure there is nothing ſo abſurd and irregular, that rude Antiquity, and the miſcarriages in humane Affairs, in length of time will not furniſh a Precedent for. And theſe Precedents ſuch as they were reported (which we are hereafter to conſider) by their diligent Members, became a *cauſa juſtifica*, and the matter in pretence to warrant their proceedings, that a great reaſon of State did ſeem to them to require.

And now whether the Lords Spiritual can be Judges in Capital Cauſes in Parliament is become a Queſtion.

Though the Biſhops Right to judge in Capital Cauſes in Parliament, ſeem to be clear and materially demonſtrated from what is viſible and obvious, to the moſt vulgar obſervation of the conſtitution of the Government; every body knows how the Lords Spiritual and Lords Temporal are placed in the ſtile of Acts of Parliament, and in the Heralds order in the Houſe of Lords.

The Arch-Biſhops give firſt their Votes, even before Dukes; The Suffragan Dioceſans after the Viſcounts, and before the Barons: And in the ſame order did the Biſhops ſtand in the publick Cenſus in the times of the *Saxons*, as may be ſeen in Sir *Henry Spelman* his Gloſſary in the word *Alderman*.

The

The great Authority, Power and Rule, that was intended the Prelates ſhould have in all the great concernments of the Kingdom that were to make the buſineſs of the Houſe of Lords, may be beſt underſtood from the high place that hath been always allotted to their Order in that Houſe; for Publick and Civil Honours are always apportion'd and adjuſted to the dignity of the Miniſtries, Offices, and Services, that are to be performed to the Government. Such a ſolæciſme was never enacted by an Order of State, That thoſe perſons that were leſs in Power, and under abatement and reſtraint of Authority, ſhould be preferred to thoſe in place, that had plenary power in the ſame Courts. It is well known too, That the Arch-Biſhop of *Canterbury* was originally honoured with the firſt Writ of Summons to Parliament. Since the Conqueſt there never was an *Engliſh* Biſhop, that had not his ſeveral Writ of Summons to Parliament; Though the number of Temporal Barons hath been reduced, and many of the Regular Barons diſmiſt of that honour, for that their office was nothing in the Church, and nothing but the poſſeſſions of the Abbots, preferred them to that State. Nothing ſeems too big or too high for ſo great and publick a character of the Biſhops, or out of the intendment of their truſt, that can ever be the buſineſs of a Parliament. The greater the matters are that are agitated there, the more neceſſary is the aſſiſtance of the Biſhops; for he

that in any affair is moſt truſted, is to be moſt concerned, and by how much the affairs are of greateſt moment, in the ſame proportion they are more ſtrictly obliged and required to aſſiſt in the management thereof.

We all know what ſort of criminal proſecutions thoſe are, that are made in Parliament, and what great conſideration they are of: That they are always the ſymptoms of a very ſickly State, and the reſults of very great diſorders in the Common-Wealth. In theſe Caſes, if in any, the Lords Spiritual cannot be wanted: The neglecting to interpoſe in any one ſingle proſecution that is Parliamentary, hath proved the occaſion, That their Right of Seſſion is now brought into Queſtion. For to ſpeak the truth, it is not very conſiſtent with the Reverence that is naturally due to the Prelates, to think that a Truſt and Authority of ſo high a nature, ſhould be committed to them, and they ſhould at any time find reaſons to neglect it. But for what omiſſions they have been guilty of (though upon a general conſideration without examining the particular Cauſes and Reaſons, men not friendly to their Order, may thus cenſure them) we ſhall make a fair Apology as we ſhall meet with them, and as they fall in to be conſidered in this Diſcourſe.

We were now to give ſome account, how this comes now to be a queſtion, for the very queſtioning thereof makes ſome prejudice againſt the

the Right; and there is ſcarce any thing ſo certain and true in Nature, but if once put under diſpute, that can recover again into a general certainty and aſſurance.

It hath ſcarce eſcaped any mans obſervation, that hath been acquainted with the buſineſs of the Courts of Law, That the greatneſs of the pretender, and the value of the Intereſt and Right in pretence, doth cauſe a point of Law to be contended, which would never elſe have been ſtirred, eſpecially if the Right be invidiouſly poſſeſſed by another. Beſides theſe three conſiderations, which are foreign to the true Right, I proteſt there is nothing to my apprehenſion of any moment offered in Print to continue it a Queſtion.

I find two Books Printed upon this Queſtion, both of them tending to diſgrace the Biſhops Right of judging in capital Cauſes in Parliament. One in *Octavo*, called *A Letter of a Gentleman to his Friend, ſhewing the Biſhops are not to be Judges in Parliament, in Caſes Capital.* He begins with a Preface containing ſome matters and reaſons againſt Biſhops intermedling at all in ſecular affairs; and after that, he tells us, That the Law of Parliament is beſt declared by uſage, gives us ſeveral Precedents, wherein he ſuppoſes the Biſhops abſent; and concludes they were ſo for want of Right and Authority to be there. And to give ſome Authority to his Precedents of omiſſion (as he would have them)

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He tells us of the Aſſize of *Clarendon*, an Act of Parliament made 10 *Hen.* 2. that excluded the Biſhops in ſuch Cauſes; and of a Proteſtation made by all the Biſhops in the 11 *R.* 2. whereby they renounce all Judgment of Right in ſuch Cauſes, upon the obligation they were under to the Canon Law: and to render it impoſſible, they ſhould have any ſuch Right, and to make them incompetent Judges, he adventures to ſay and prove after his manner, That the Biſhops are not Peers; and to prepare the way for their remove out of that Houſe, he adventures to broach an opinion, That the Biſhops *are not one of the three States, nor an Eſſential part of the Government.*

There is another Book in *Folio*, called *A Diſcourſe of the Peerage and Juriſdiction of the Lords Spiritual in Parliament.* This Author purſues the ſame deſign, upon the ſame grounds, with ſome peculiar reaſonings of his own. If therein I give him ſatisfaction in what he hath peculiar, without mentioning diſtinctly of them, I am ſure he will thank me for it.

But we will conſider the *Octavo*'s Preface, examine his Precedents, and ſhew that they are either not againſt us, or for us. And all along obſerve the candor and integrity of the Author. We ſhall further ſhew how abſurd his Reaſonings are to make thoſe Precedents to conclude any thing for his purpoſe. We will alſo with the

the cleareſt demonſtration prove, That the Aſſize of *Clarendon* eſtabliſheth the Biſhops Authority and right to judge in capital Cauſes in Parliament: And likewiſe, that the proteſtation made by the Biſhops 11 *R.* 2. is a moſt ſolemn Recognition of their Right; That the Biſhops have ſate in Judgment in the greateſt Capital Cauſes in Parliament that ever happened; That this their Authority hath been exerciſed in their own Perſons, and by their Proxies, and recognized by Parliaments, and other great Courts of Judicature; but never before this time brought into Queſtion: That no Canon could leſſen the Right, at moſt it is but a Councel for their guidance in the exerciſe of their Authority, which they might obſerve as they pleaſe: That the Popes Canon Law was never received into *England*, that prohibits Biſhops to Judge in Capital Cauſes: That the Biſhops have declined to aſſiſt in pronouncing the Sentence of Death ſometimes, as undecent for their Order; but notwithſtanding, and without being contrary to the pretended example and practice of their Predeceſſors, the Biſhops may judge upon the Plea of the Earl of *Danby*'s Pardon. For that if they do judge the Pardon not good, the Earl is not therefore to be condemned. And for the better clearing the Biſhops Right, and for the eſtabliſhing the Government, we ſhall prove that the Spiritual Lords are Peers of the Realm, and one of the three States,

and

and an eſſential part of the Government, which no legal power can change or alter. Laſtly, we ſhall repel the calumnies of the Adverſaries in this Cauſe, by which they endeavour to render the Prelates unworthy of their Right, and to put them amongſt the *prodigi & furioſi*, that are ſcarce allowed to be Proprietors of their own. And conclude our Diſcourſe with a juſt Apology for the Lords the Biſhops.

CHAP. II.

AND firſt I begin with the *Octavo*, which in the Introduction to his Precedents ſaith, That he will not meddle with the General Queſtion, How far forth Clergy-men in Orders are forbidden having any thing to do with ſecular matters, nor what in that particular the Imperial Law requires, as that Reſcript of the Emperor *Honorius* and *Theodoſius*, which Enacts that Clergy-men ſhall have no communion with publick Functions, or things appertaining to the Court; or the Decree of *Juſtinian*, That Biſhops ſhould not take upon them ſo much as the Overſight of an Orphan, nor the proving of Wills: Saying, It was a filthy thing crept in amongſt them, which appertained to the Maſter of his Revenue. Nor what our common Law of *England* ſeems to allow or diſallow, having provided

vided a ſpecial Writ in the Regiſter upon occaſion of a Maſter of an Hoſpital being it ſeems a Clergy-man, and choſen an Officer in a Mannor, to which that Hoſpital did belong, ſaying, it was, *Contra Legem & conſuetudinem Regni, & non conſonum*; It was contrary to the Law and Cuſtom of the Kingdom, and not agreeable to Reaſon, That he who had Cure of Souls, and ſhould ſpend his time in Prayer, and Church-duties, ſhould be made to attend upon Secular imployments. I meddle not neither, ſaith he, with what ſeems to be the Divine Law, as having been the practice of the Apoſtles, and by them declared to be grounded upon reaſon, and to be what in reaſon ought to be; which was this, That they ſhould not leave the word of God and ſerve Tables, though that was a Church Office; and yet they ſay it is not reaſon they ſhould do that, for their work was the Miniſtry of the Word and Prayer, much leſs then were they to be employed in ſecular affairs. This with great skill he prefixes to his precedents (which make the Law of Parliament, which is the Law of the Land he ſaith) and after he had ſaid all that he could to make the very pretence it ſelf unlawful, and to perſwade the ſhutting of the Biſhops out of the Houſe for altogether, he ſubjoyns his Precedents: He thought certainly that when he had placed the Precedents in ſuch a light, they muſt look all of that colour, and have that appearance, which he endeavours by other Arts to give them.

But

But we ſhall ſpoil his deſign in a very few words, which the obſervant Reader will apprehend, how pertinent it is, and ſatisfactory to what is objected in the recited Preface, though we do not for brevity ſake apply our Anſwer to every particular of his Diſcourſe.

We ſay therefore we can't think the Clergy fit for Proctors, Publick Notaries and Scriveners, or Uſhers of Court, or other ſubſervient offices; nor fit to make Conſtables, Tythingmen, and Scavengers; nor to keep Watch and Ward, and to be a Hayward or Bayliff of his Worſhips Mannors and Townſhips: Or that they ſhould be Merchants or Farmers, or interpoſe in any Secular Affairs for gain: That it was declined by the Paſtors and Teachers of the Church, as an indignity for them to adminiſter to Tables, *i. e.* to the Proviſions of Charity in their Church-feaſt, and they ought to keep far off from a ſuſpicion of filthy Lucre; nay, not to Preach Principally for gain, or make a gain of Godlineſs: By the Imperial Law accordingly, they were diſcharged from the trouble of being Tutors and Curators of Orphans; nay, where the Law had deſigned them that care by their relation to the Orphans, out of reſpect to their dignity they were diſcharged by the Law, that they might not incur unkindneſs in the neglect of their Relations, nor yet be incumbred with ſuch private attendances to divert them from their great Cure. Though the Presbytery might

might be admitted *ad Tutelam Legitimam* by their own consent, and this was made Law by *Justinian*, *Cod. L.* 1. By which Law it appears that not a Judgment of Incompetency in Clergy-men, to intermedle in Secular affairs; but an honourable exemption of the Bishops from such private concernments, was the reason of that Law.

It was further provided by a Law of *Justinian*, *Cod. L.* 1. That Priests should not be made of Court-Officers, but those that were so made might continue, the reason of the Law is contained in it; because that such a man was *Enutritus in Executionibus vehementibus seu asperis & his quæ ex ea re accidunt peccatis. Non utique æquum fuerit modo quidem & illico esse Taxeotam & Buleutam & facere omnium acerbissima; mox autem Sacerdotem ordinari, & humanitate & innocentia exponentem dogmata.* In all this the honour of the Church was consulted.

But business of weight and trust was committed to them: *Valent. Valens* appointed Bishops to set the price of goods sold with this reason, *Negotiatores ne modum mercandi videantur excedere, Episcopi Christiani quibus verus cultus est adjuvare pauperes, provideant. Justin.* 79. *Novel*, submits Monks to the Jurisdiction of Bishops, *Novel* 83. he decrees the like for Clerks, as well for matters Civil, as for Ecclesiastical Crimes, reserving others to his Officers; and furthermore, in case the Bishops cannot or will not take cognisance of them, he refers them to his Magistrates.

Nay,

Nay, the Emperours proceeded further, and did give Juriſdiction to Biſhops, not only over Clerks, but alſo over Laymen. *Conſtantine* the Great (whoſe Law the Canoniſts aſcribe to *Theodoſius*) made a very favourable conſtitution in behalf of Biſhops; whereupon he gives them the Cogniſance of all Civil Cauſes betwixt Laymen, upon the bare demand of one of the Parties, albeit the other did not conſent unto it, in ſuch ſort as the Magiſtrates are bound to deſiſt from the Cogniſance of it, as ſoon as one of the parties ſhall require to be diſmiſt and ſent thither; whether it be at the beginning, or middle, or end of the ſuit.

Arcadius and *Honorius* derogating from this Law, will have it to be by the joynt conſent of both parties, and that by way of Arbitrement.

The ſame Emperours together with *Theodoſius* do ordain, That there ſhall be no appeal from the Epiſcopal Judgment, and that their ſentence ſhall be put in execution by the Serjeants and Officers of the Judges.

The two laſt, *Juſtinian* would have to be obſerved; for as for that of *Conſtantine*, he did not inſert it in his Books, which *Gratian* hath confeſt in his decrees: And whereas in the Code of *Theodoſius*, the inſcription of the Title runs thus, *De Epiſcopali Judicio*; *Juſtinian* inſtead of it hath put *De Epiſcopali Audientia*, to ſhew that it is not properly any Juriſdiction that is beſtowed upon them,

them but a friendly and arbitrary compoſition to abridge proceſs.

After this the Emperour *Charles* the Great in his Capitulary renewed the Law of *Conſtantine*, and gave the ſame Juriſdiction therein contained unto all the Biſhops, repeating the ſame Law, word for word; which the Popes have not forgot in their Decrees, where they have inſerted the Conſtitution of *Conſtantine* under the name of *Theodoſius*, juſt as *Juſtinian* did in his Books, the Reſponſes and Commentaries of Lawyers to give them the ſtrength of a Law.

But I know there is a Queſtion made by very Learned men, Whether that Law of *Conſtantine* is not ſuppoſititious? But whether it be or be not, we have alledged enough without it to prove that Chriſtian Emperors, and the ancient Chriſtian Church was not of the opinion of this Author, and that his Citations inſomuch as they are true, are nothing to his purpoſe; The cauſe or reaſon of thoſe two Laws expreſſed in the Laws themſelves are, For that the Authority of Sacred Religion invents and finds out many means of allaying Suits, which the Tyes and Forms of captious Pleadings will not admit of; That the Judgments of Biſhops are true and uncorrupted; That this is the choaking of thoſe malicious ſeeds of Suits; To the intent that poor men intangled in the long and laſting ſnares of tedious Actions, may ſee how to put a ſpeedy end to thoſe injuſt demands which were propoſed to them.

But the Pope his Decretals, the Court of *Rome*, and other Eccleſiaſtical Courts are of old complained of, as the ſource of Iniquity and injuſtice, and of all the ſhufflings and tricks that ever could be invented in matter of pleading, and all Papal Chriſtendom hath groaned miſerably under them; I wiſh that we may never hear duly of any ſuch complaints of our Eccleſiaſtical Courts.

It is worth obſerving how the Church and Common-wealth did Actions contrary to each other in purſuance of their ſeveral Intereſts. The Common-wealth endeavoured to engage Biſhops in the higheſt ſecular affairs, and in their Supream Judicatures, and ſo the People would have it, not doubting of ſuch adminiſtrations as they might fairly expect from the Biſhops Ability, Authority and Religion. But on the other ſide the Church did as much decline them as ſhe could, and ſo far as ſhe might, ſhe uſed her Reſtraint only in prohibiting them from medling for their own private gain in Temporal affairs. *Can.* 14. *Arles*, *Clericus turpis lucri gratia aliquod genus negotii non admittat*: But did not take from them all opportunities both of doing good to their People and ſecuring the Secular Power (of which they became part) to their own aſſiſtance, and without reſtraining their Services to the Prince when required.

From which practice of the Church, the Pope took

took advantage to put his peremptory reſtraints upon the Biſhops and Clergy from intermedling in Secular affairs to make them the more ſubmitted and dependent upon himſelf, the better to arrive to his Eccleſiaſtical Monarchy. The Dignities and favours that Biſhops received at the Courts of Princes was the envy of the Pope, and matter of quarrel againſt them. *Petrus Blæſenſis*, upon ſuch an occaſion makes an Apology to Pope *Alexander* the Third, in an Epiſtle writ in the Name of the Arch-Biſhop of *Canterbury*, in defence of the Biſhops of *Ely*, *Worceſter* and *Narwich*, who attended then at Court upon the ſervice of the King: which becauſe he hath been an Author produced by the other ſide in this Cauſe, and becauſe what he ſays for their being admitted into the Councels of Princes contains ſo many advantages to the Church and State, I ſhall here tranſcribe; *Non eſt novum quod Regum Conciliis interſint Epiſcopi, ſicut enim honeſtate & ſapientia cæteros antecedunt, ſic expeditiores & efficaciores in Reipub. adminiſtratione cenſentur; quia ſicut ſcriptum eſt (minus ſalubriter diſponitur regnum, quod non regitur conſilio Sapientum) in quo notatur eos conſiliis regum debere aſſiſtere qui ſciant & velint & poſſint patientibus compati, terræ ac populi ſaluti proſpicere, erudire ad juſtitiam Reges, imminentibus occurſare periculis, vitæque maturioris exemplis informare ſubditos, & quadam Authoritate poteſtativâ præſumptionem malignantium cohibere*: He proceeds

in his discourse, and brings the examples of *Samuel*, *Isaiah*, *Elisha*, *Jehoiada*, *Zachary*, who were Priests and Prophets respectively, & yet imployed in Princes Courts, and Councels of Kings, and adds, *Unum noveritis quia nisi familiares & Consiliarii Regis essent Episcopi supra dorsum Ecclesiæ hodie fabricarent peccatores, & immaniter & intolerabiliter opprimeret Clerum presumptio laicalis:* then he adds advantages to Religion and Policy hereby, *Istis mediantibus mansuescit circa simplices judiciarius rigor admittitur clamor pauperum, Ecclesiarum Dignitas erigitur, relevatur pauperum indigentia, firmatur in Clero libertas, pax in populis, justitia liberè exercetur, superbia opprimitur, augetur laicorum devotio, religio fovetur, diriguntur judicia.*

It is well known (and I will not be so impertinent as to go about to prove) that the chief Ministers of Religion have been the greatest men in Civil Government in all Nations, and in all Religions as well as in ours; and as certain it is, this Author will never find reason or precedent of Authority or weight enough to perswade the contrary, or an alteration therein: notwithstanding that complaint which he tells us was made in the 45 of *E.* 3. by the two Houses, Counts, Barons, and Commons to the King, how the Government of the Kingdom had been a long time in the hands of the Clergy; *Per cet grant mischiefs & dammages sont avenuz en temps passe, & pluis purroit eschueren temps avenir, al disheri-*

son

ſon de la Coronne & grant prejudice du Royalme: Whereby great miſchiefs and damages have happened in times paſt, and more may fall out in time to come to the diſheriſon of the Crown, and great prejudice to the Realm. And therefore they humbly pray the King that he would employ Lay-men; This they had too much reaſon to deſire then, when the Pope had advanced his Authority over the Clergy, and put them under Oaths of Canonical Obedience, which rendred them leſs fit to be intruſted in the Government of this Kingdom, for that thereby they were become Subjects of another Empire, uſurping continually upon us; which will never be our Caſe again if the Biſhops can help it.

CHAP. III.

AND now we proceed to the Precedents, of which the *Octavo* Book principally conſiſts, which ſeem, as that Author and the other in *Folio* would have it, to be not only a diſcontinuance of the Right of the Biſhops to judge in Capital Cauſes, but an argumentative proof that they never had any; becauſe it can as they ſay be never proved to be otherwiſe. Immemorial time I confeſs is a great evidence of the right, whether *In non uſer* or *uſer*, and a fair reaſon to allow or deny the pretence; and therefore we

will now consider the Precedents: As for the argumentative and discursive parts of those books they will fall in to be answered by way of Objection, when we are discoursing and proving the affirmative part of the Question, and will best be reproved by being placed near the light of our Reasons for establishing the Right of the Prelates.

If we do not give some satisfaction to these Precedents, whatever we shall say, I know can signifie no more than an Argument to prove a thing not true, which is possible, & *de facto*, testified by unexceptionable witnesses; for such the Precedents will be taken until exceptions are made to their Testimony.

The Precedents produced by the two Authors are mostly the same, only the *Octavo* hath more than what the *Folio* Book hath recited.

The first case that the *Octavo* produceth against the Lords Spiritual, their Right of being Judges in Parliament in Capital Causes, is that of *Roger Mortimer* Earl of *March*, *Simon Benesford*, and others (who were no Peers) and yet tryed in Parliament, and no Bishops present; and we agree it probable for his reason, because there is mention made of Counts, Barons and Peers; Peers, being named after Barons, could not comprehend the Bishops. Because we think it reasonable, when the orders of that House are particularly enumerated, that the order omitted should be intended absent; but we will

will not allow but that *Peers* is, and ſo is *Grants* comprehenſive of Biſhops: Nor will we when the entry is General intend the Biſhops abſent, except he can otherwiſe prove them abſent which we mention in the entry once for all, as juſt and common meaſures between us in this diſpute. It will appear true what we affirm of the words, *Peers* and *Grants*, by what follows: And if we ſhould not inſiſt upon their being preſent, when nothing appears to the contrary, we ſhould do wrong to the Cauſe.

But to come to the conſideration of this Precedent: Is this a juſt Precedent? Is not *Magna Charta* hereby violated? Are not the proceedings altogether illegal? Here are Commoners tryed by Peers in Parliament. It is well known, that the high diſpleaſure of the King was concerned, and that he did interpoſe with a plenitude of Power in this particular caſe againſt the fundamental conſtitutions of the Government; the greateſt crime of this Earl was too much familiarity with the Kings Mother, Indignation and Revenge, and not Juſtice, formed the Proceſs; It was proceeded to condemn him *Judicio Zeli*, upon pretence of the Notoriety of the Fact.

Sir *Robert Cotton* in his abridgment tells us *Anno* 4 *Ed.* 3. That the King charged the Peers (who as Judges of the Land, by the Kings aſſent djudged): that the ſaid *Roger* as a Traytor ſhould be drawn and hanged. The Biſhops were not preſent, certainly they were none of the

Judges that gave Judgment as the King pronounced without Cogniſance of the Cauſe; The King had more Honour for their Order, than to call them to ſuch Drudgery and Service of the Crown: The iniquity of the ſentence appears by the reverſal thereof in Parliament, 25 *Ed.* 3. in which the Original Record is recited: Sir *Robert Cotton* in his Abridgment tells us, That this Earl being condemned of certain points whereof he deſerved commendation, and for other altogether untrue ſurmiſes, there was a Bill brought into the Lords Houſe for the reverſal of the Judgment, and it was reverſt by Act of Parliament; indeed it could not be otherways reverſt: for no Court can Judicially reverſe their own Judgment for Error in Law: and a Judgment in the Lords Houſe, (being the *dernier Reſort*) cannot be repealed, but undone it may be by themſelves in their legiſlative Capacity. Here ſaith the *Octavo*, the Biſhops were not preſent at the paſſing of that Bill, but yet the *Octavo* Gentleman will not pretend that the Biſhops are to be excluded in any Acts of Legiſlation. Why therefore was he ſo willing to impoſe upon the People ſo falſely, and unrighteouſly, and to produce this as a Precedent againſt the Biſhops Right of Seſſion in matters of that Nature, by himſelf recognized? There is nothing can excuſe him herein, for he is certainly ſelf-condemned of undue Art in this matter.

In 20 *R.* 2. the Caſe of Sir *Thomas Haxey* happen'd,

happen'd, which the *Octavo* book (page 20) produceth againſt us. He was forſooth condemned in Parliament, for that he had preferred a Bill in the Houſe of Commons, for regulating the outragious Expences of the Kings Houſe, particularly of Biſhops and Ladies. *Haxey* was for this tryed, and condemned to death for it in Parliament. And here appears to be no Biſhops; and there ought not to have been any for theſe reaſons. Firſt, that the Biſhops were the parties wronged, and therefore could not in any fitneſs give ſentence; But Secondly, (if that was not in the Caſe) that that caus'd the proceſs was Royal anger upon a great faction of State, (in which I believe the Biſhops were engaged) made for depoſing of *Rich.* the 2*d.* that was underſtood by the King to be in acting, and promoted by Sir *Thomas Haxey* by his Bill. It was this made the ſentence altogether abhorrent from legal Juſtice in matter and form. Here was a Tryal of a Commoner by Peers, a matter made Treaſon, that did participate nothing of the nature of Treaſon. But the diſcreet Gentleman will take notice of nothing that is faulty in this Caſe, but that this proceeding tends to abridge freedom of ſpeech in Parliament, which he loved from his youth, which we do not blame in him: As he did alſo to talk againſt Biſhops, which he cannot depart from, when he is old. But in the firſt of *Hen.* 4. this Judgment of *Attainder* was repealed and annull'd, as he himſelf tells

tells us, *Fol.* 25. And here the Lords Spiritual were Judges, which muſt be remark't for the honour of their Order, that though they were the *pars læſa*, by that fault, ſuch as it was; yet notwithſtanding they concurred readily to the repealing the Judgment.

But by this it appears that the Biſhops did agreeable to their rightful Authority, ſit in Judgment in Parliament in Capital Cauſes; and therefore in conſequence, becauſe it is a Caſe of his own production, he ought to allow that the Biſhops might have had Seſſion in the Repeal of the Attainder of *Roger* Earl of *March*, if it had been, or could have been repealed by Judgment, or a Judicial Act of the Lords Houſe.

For will this renownedly wiſe-man, for avoiding of this his own teſtimony which he hath juſtly produced (though it proves to teſtifie againſt himſelf) ſay, that the Biſhops can be preſent at repealing of a Judgment of Condemnation, but not preſent at confirming any?

Doth not it, in this proceeding come before them in Judgment, and conſideration, Whether the ſentence ſhall be repealed or affirmed, and is not this with a witneſs, a queſtion of Blood? The Judgment being upon an appeal or review muſt be final, peremptory and decretory, and is more a queſtion of blood, than the Cauſe can be reckoned and deem'd to be upon the firſt Inſtance. Or doth he think fit that there ſhould be two

ſorts

ſorts of Judges appointed, a hanging Judge, and a ſaving Judge; if he doth, I am ſure he will not be able to find an employment for a juſt Judge.

So that, I think, to all men that can conſider, we have ſufficiently vacated that teſtimony, that the Caſes of the Earl *March* and *Haxey*'s ſeem'd to give againſt us, and they are fairly come over to our ſide. And we have provided herein ſufficiently for the recovering of all men into an indifferency againſt the Prejudices, this *Octavo* by its great Eſteem hath done to their Judgments.

The Third Precedent is, 15 *E.* 3. That Parliament was declared to be called for the Redreſs of the breach of the Laws, and of the Peace of the Kingdom, and as the *Octavo* hath it, *Fol.* 8. becauſe the Prelates were of opinion, that it belonged not properly to them to give Councel about keeping the Peace, nor puniſhing ſuch evils; they went away by themſelves, and returned no more (ſaith he) but that is out of the Record, (ſo ready this Author in *Octavo* is to ſhut them out of the Houſe;) but I pray would not the Temporal Lords, if the King had conſulted the Parliament in matters Eccleſiaſtical, have in like manner departed, but would ſuch departure of the Temporal Lords exclude them from having any thing to do in the Affairs of the Church; Why then are the Biſhops treated in their Right ſo unequally?

And

And this muſt ſerve for an Anſwer to the *Folio*, p. 17. where he is very large in reciting Records of proceſs, and Proclamation againſt the Earl of *Northumberland*, agreed only by Lords. If a Liturgy, or book of Canons were to be eſtabliſhed by Law, the Biſhops certainly would have the forming of them. The *Octavo* ſaith, that Commiſſions were then framed by the *Counts*, *Barons*, and other *Grants*, and brought into Parliament, but no Biſhop was preſent, ſo much as to hear the Commiſſions read; becauſe they were for enquiring into all Crimes, as well Capital as others. And for affirming this (for all that can appear to us) he only conſulted his Will and Pleaſure, like an honeſt man to the cauſe he defends, for he hath not told us from any Record, what the Nature of theſe Commiſſions were. But we obſerve, that though this Parliament was called for matters of the Peace, yet the Biſhops had their Summons, and it was not a Parliament *excluſo Clero*. The Biſhops it ſeems upon the opening of the Parliament, and the cauſes of convening, modeſtly, it ſeem'd, declared that they were not competent, as not perhaps ſtudied in Pleas of the Crown, or perhaps had not been ſo obſervant of fact, in the matters of grievance. What harm in all this? they that cannot propound may judge of Expedients propounded, and ſo did they; for it doth appear by the Record, 6 *E.* 3. *N.* 3. that the Reſults of the Temporal Lords were approved

in

in full Parliament, by the King, Biſhops, Lords and Commons, which the *Folio* agrees. But it ſeems modeſty is a dangerous thing; and not to be forward to judge and determine, though the matter be not underſtood, may be a good Cauſe to turn a Judge out of his Office, and forfeit his Judicature. Beſides, the principal buſineſs of this Parliament was Legiſlation, in which the Prelates have an undiſputed Right of Seſſion, and may they not adviſe upon what they make into a Law? May not they conſider of the matter that is to paſs into a Law in all the ſteps it makes?

But it is admirable what the *Folio* Book ſaith, *viz.* that by this Record it is evident that the Prelates have no Judicial Power over any perſonal Crimes, which are not Parliamentary (I ſuppoſe he means Crimes not delated in Parliament.) This doth very much fortifie the foundations and grounds of his Diſcourſe. What are the grounds of his Diſcourſe, I ſhall never be able to find out, except it be an over-weening Opinion of himſelf to meddle with theſe matters which ſeem too high for him; and to which the reading of my Lord *Cooks* Inſtitutes, and the broken Commentaries of the Law, will never render any man competent.

It's true the Biſhops have never any Power and Cognizance of any Cauſes, except they are Commiſſionated thereto, out of Parliament, but as true it is of the Temporal Lords; and therefore whatſoever

whatsoever advantage this will do his Cause, with all my heart let him take it.

The next Case produced as a Precedent for them, is the Case of Sir *William de La Zouch*, and Sir *John Gray*, for a Quarrel in the Kings presence they were both committed to the Tower, and after brought into Parliament, no Bishops there.

It is a Case that could not be Judged there, neither was it; but one of them was discharged, because no probable matter of offence against him, and the other remanded to the Tower, (I suppose) to be proceeded against as the Law required. Is this cause (I pray) to his purpose? Have not the Prelates Judgment in Causes of Trespass, that properly come before that House by his own Confession? And yet the *Octavo* remarks here, that no Bishops were present to Judge so much as of a Battery; though the Record warrants him to say only an Assault. But out of his great sincerity, and to make a Precedent where he could not find one for his turn, he foists a Battery into the Case, hoping that then the forward Reader would supply the rest, and smell Blood in the Case, which must be interdicted to a Bishops Cognizance.

But observe what an aking tooth he hath against the Bishops Right; for he could not but have in his mind, what almost immediately after, he writes down in his *Octavo* (*viz.*) the

Case

Caſe of Sir *John Lee*, 24 *E.* 3. and of ſeveral perſons, 50 *E.* 3. and 51 *E.* 3. cenſured in Parliament, by Biſhops for miſdemeanors. And he ſaith well they might; which certainly together with the Caſe of *Michael de la Pool*, 10 *R.* 2. he troubled himſelf to tranſcribe, to make a ſhew of Number and falſe Muſters, a ſleight that muſt not paſs upon the people, and a Stratagem that will never get him any advantage towards a Victory.

We omitted to conſider the Caſe of Sir *William de Thorpe*, 50 *E.* 3. as it lies in order in his Book, becauſe we thought it more expedite to examine thoſe that ſpake to the ſame thing together, but now we will examine it. The Record of a Judgment of Death againſt him for Bribery, was brought into Parliament, ſaith the *Octavo*; in full Parliament, ſaith Sir *Robert Cotton*, and the King cauſed it to be read before the *Grants* in Parliament: The Biſhops (ſaith the *Octavo*) could not be there, becauſe this was no employment for them; and thus he proves his cauſe, it was ſo, becauſe it was ſo. And for want of proof concludes he hath a very good Cauſe: But he knows if he would tell us the truth, that a full Parliament doth include Biſhops; that the Biſhops are truly *Grants*, and ſo called, that the Biſhops could not vaniſh away at the putting of the queſtion. But we ſhould have had a moſt famous Record of that ſtory and wonderful Accident.

The

The Cauſe of *William de Weſton* and *John de Gominits*, 1 *R.*2. was for traiterouſly ſurrendring Towns and Caſtles in *Flanders* to the Kings Enemies. And the queſtion was, whether they behaved themſelves well in their defence, and did therein like valiant and faithful Commanders; Whether the Towns could be preſerved againſt the ſtrength of the Enemies that did attach them. Indeed not a very proper queſtion for a Biſhop to determine: The Examination of the Charge and Defence was committed to ſeveral Lords Temporal, named in the Record; But it muſt be obſerved, though theſe Lords managed the Cauſe, found the Towns upon Examination, not of neceſſity, but wilfully delivered, and agreed what Judgment ſhould be pronounced againſt them: Yet obſerve, their Anſwers were put in full Parliament. When the Judgment was pronouncing, there was likewiſe ſitting a full Parliament, which the *Octavo* doth wilfully omit. And the Record further ſaith, that they were brought before the *Seigniors* in Parliament, *Friday* the 27. of *November*, and again before the ſaid Lords, *Saturday* the 28. of *Nov.* That all this while in the Record, there is no mention of the Names of any particular Lords, ſo that we hear nothing yet in the Record, but of a full Parliament, Seigniors in Parliament, which are the moſt comprehenſive terms, and can, and do include Biſhops, and ſtrongly intend them included. He that ſaith all, excepts none, the

the Record ſaith, that when the Judgment was to be pronounced, *Les Seigniors dudit Parliament ceſtaſcavoir*, and then names the Duke of *Lancaſter*, Earls of *Cambridge*, *March*, *Arundel*, *Warwick*, *Stafford*, *Suffolk*, *Salisbury*, *Northumberland*, Lord *Nevil* and *Clifford*; and other Lords, Barons and Bannerets being then in Parliament, had met and adviſed upon the matters before. Theſe Lords agreed it ſeems the Judgment for the whole Houſe, and it was pronounced in full Parliament; and that in the Names and Authority of the whole Parliament. Pray let it be obſerved, that when the Record ſpeaks of Seigniors, in the firſt part of it, no Lords are named, and ſo all intended; when afterwards he mentions the Lords, the Record ſaith *avantdits*, or foreſaid Lords, and no Lords named yet, ſo that all the Lords of Parliament are then likewiſe included: But when he names the Lords that had adviſed, there is no *avantdits*, or aforeſaid. Though the *Octavo* puts the *avantdits*, or the *aforeſaid* to the named Lords, to the purpoſe, that it may ſeem, that no Lords were preſent in this Cauſe before in Parliament, but thoſe named and mentioned, amongſt the which there were no Biſhops, againſt the Faith of the Record. To the Record I appeal; *Rot. Parl.* 1 *R.* 2. *Mem.* 5.

The next is Sir *Ralph Ferrers* his Caſe, 4 *R.* 2. He was brought into Parliament, and there tryed for Treaſon, in holding intelligence with the

French. The Entry is, *It seem'd to the Lords of the Parliament, that the said Sir* Ralph *was innocent.* This testimony too is *argumentative*, and concludes Bishops not there, because not expressly mentioned, as they were in *Alice Perries* Case, 1 *R.* 2. I never could have a good opinion of a cause, that hath nothing but *argumentative* proofs, for this reason; because there are more things possible than ever happen'd; but a reasoning Witness is always accounted a willing Witness, and therefore a Witness *suspectæ fidei*; but most certain, a Witness with a reason His testimony is no better than his reason. But I pray must the Entries of the Clerks be so nicely weighed? Are they so oracularly penned, that every *iota* of the Journal must comprehend a Mystery of State, and carry in it the very constitution of the Government? must that be such and no other, than short or large Entries make it? Must a Criticism upon the Clerks form of Entry alter and refix the Government? must it change and be ambulatory at the haste or leasure, the short or more large Entry of the Clerk? Did ever any wise man, before this Criticiser, ever determine questions of the greatest moment upon such trifling considerations? or suspend the most *momentous concerns* of a Nation, the very Government it self, upon such a very slender thread? But to leave no scope for such Cavillations, we will turn him to the *Rot. Rolls* of 14 *E.* 3. Were not the *Grants* the Bishops, as well

well as the Temporal Lords? Are not both Biſhops and Peers called Seigniors? Are not Seigniors and *Grants* of the ſame import? And as certainly this *argumentative* teſtimony makes no credit to the Cauſe, nor to the Author of the *Octavo* who produc'd it.

The next Caſe is of the Biſhop of *Norwich*, 7 *R.* 2. who is brought to Judgment in Parliament, amongſt other Offences, for betraying *Graveling* to the *French*, which was Treaſon. And this cauſe the Record ſaith, was heard before the Lords Temporal: And here I will agree that the Biſhops were not preſent, but I will not allow that they were excluded. And if that addition of *Temporal* had been to the Seigniors in Sir *Ralph Ferrers* Caſe, or to the Grants in Sir *Wil. Thorps*, I would have allowed the Biſhops in thoſe Caſes not preſent likewiſe. But why I pray may it not be with as much fairneſs concluded that the Biſhops were preſent (becauſe the addition of Temporal is not made to Seigniors and Grants) in the ſaid Caſes of Sir *Ralph Ferrers*, and Sir *Wil. Thorpe*; as it can be that they were abſent in the hearing of the ſaid Caſes, becauſe the word Prelate or Biſhop, is not in thoſe Entries expreſſed? If he will be juſt and change the Tables, He muſt yield us the Argument, for he knows that there is no eſtabliſhment in the *Modus tenendi Parliamentum*, directing the Forms of Entries, or any *ſolemnes formulæ*, whoſe import and value is aſcertained

and made indiſputable, but are to be expounded by an eaſy interpretation; ſuch as we uſe, when we make fair conſtructions in common ſpeech. But to give this another Anſwer, The Arguer is herein guilty of that fallacy which they call μετάβασις εἰς ἄλλο γένος, or *non cauſa pro cauſa*; And his Witneſs doth not ſpeak *ad idem*. The Biſhop was an Eccleſiaſtical perſon, and though the Biſhops might try a Temporal Lord for the ſame offence, yet they would not conſent to try a Biſhop, and forgo that great priviledge of the Clergy, with ſo much earneſtneſs defended in that Age, to be exempt from *ſecular Judicatures*. They would not be preſent to try, becauſe of the perſon of the Defendant, which cannot be drawn into Argument, to prove that they had no cognizance of the Cauſe, with any fairneſs.

But further the *Octavo* doth afterwards produce a Teſtimony that doth contradict this laſt Teſtimony in the point for which he produc'd it. It is the Caſe of *Thomas Arundel* Arch-Biſhop of *Canterbury*, 21 *R.* 2. The Biſhops pronounced Judgment againſt him in Treaſon by their Proxy. They can it ſeems upon great Reaſons wave that priviledge, and ſubmit a great Malefactor of their own Order to Juſtice, as they did in the Caſe of *Becket* heretofore. So that you ſee here, they uſed a Juriſdiction in a Cauſe of Treaſon in the Caſe of *Thomas Arundel*, which the Biſhops could not have uſed without a

Right;

Right; And the Caſe of the Biſhop of *Norwich* is only an omiſſion conſiſtent with a Right.

The Caſe of Sir *William Rikehill* is next in order, who was ſent by *R.* 2. to *Calais*, to take the Confeſſion of the Duke of *Gloceſter*, who ſoon after was Murdered. The Judge was arreſted and brought into Parliament before the King, Lords Spiritual and Temporal and Commons; the whole matter was examined, and the Judge was examined. Here is likewiſe a clear Caſe for the Biſhops, an Inſtance wherein they did take cognizance of a Capital Cauſe in Parliament. But the *Octavo* hath a Shift for us, and ſays that there was no impeachment or charge againſt the Judge, and that the Biſhops might be preſent at his Examination. Let the Reader here obſerve the ſleights, wriglings and prevarications of this *Octavo* Author; Whatever the World thinks of this Author, I am much diſſatisfyed about him, and cannot believe him a man indifferent and impartial in this Enquiry.

In his obſervations of the Parliament of the 15 *E.* 3. the Biſhops he ſaith vaniſhed like lightning, they went away immediately at the opening. That *matters of the Peace* in general were to be treated of (wherein Blood and Member might not at all be concerned, for all that appears.) They went away and (as he would have it) they returned no more: and they muſt not hear ſo much as a Commiſſion of the Peace read.

But here in this Caſe of *Rikehill* they may examine a Murder. He will ſay (I am ſure) that though the Biſhops did examine it, they could make no judgment of the matter. But who will believe him? In the Caſe of *de la Zouch* and *Gray*, he obſerves that Biſhops could not be preſent ſo much as at a Battery, though there was no Battery in the Caſe, and yet he allows them to judge of all miſdemeanors in the ſame little Book.

I obſerve but theſe things, of many more of like nature, which the Reader may obſerve of himſelf, in that little *Octavo*; that the World may judge, how unjuſtly he deals in this Cauſe: with what iniquity and prevarication he manages a noble queſtion of Right concerning the Government of the Kingdom. With what petulancy, ſpight, and inveterate diſpleaſure, he uſeth the Biſhops. That he is grinning at them, whetting his teeth, and ſquinting upon them perpetually with an evil Eye. He oppugns their Right with Cavillations upon the Clerks Entries, with what is in the Record, and what is not, and what he is pleaſed to add of his own upon them, and with Precedents that reprove one another. Had it not been more fair for him to have ſtated the Right upon a probable reſult of all the Records conſidered together, than to make their Right ſometimes more, ſometimes leſs, ſometimes to affirm, ſometimes to deny their Right, in the ſame little *Octavo*?

He

He cannot ſure think that every Judgment that hath been given upon deliberation in the greateſt Judicature, can uncontroulably make the Law; much leſs a Fact, much leſs an Omiſſion, a Negative that can operate nothing. If nothing be Law but what hath always and conſtantly been done in the ſame manner and form, and all circumſtances the ſame, as this Author it ſeems would have it; and nothing true Theology (according to *Vincentius Lirinenſis* his Rule) but what hath been received *ab omnibus*, *ubique* & *ſemper*, We can have no Law, nor no Theology. Vain and idle opinions muſt be diſcharged, ſuch as can have no conſideration with wiſe men; and the Law muſt be declared by the Nature of Government, reaſon, and the general order of things. But we have made too long an Excurſion, We muſt return to a further conſideration of *Rikehill* his Caſe.

And now I ſubmit it to any impartial man, whether the Judge could be arreſted and brought under an Arreſt into the Parliament, and be examined and not accuſed.

The very next Caſe he recites is that of *John Hall*, in which we find nothing but an Examination and confeſſal; upon which he was condemned as a Traytor. And ſo would it have fared with Sir *William Rikehill* without doubt, if he had been guilty and had confeſſed. Neither the *Octavo*, nor Sir *Robert Cotton* mentions any formality more againſt the one than the other.

The Cauſe of *William de Weſton* and *John de Gominits*, 1 *R.*2. was for traiterouſly ſurrendring Towns and Caſtles in *Flanders* to the Kings Enemies. And the queſtion was, whether they behaved themſelves well in their defence, and did therein like valiant and faithful Commanders; Whether the Towns could be preſerved againſt the ſtrength of the Enemies that did attach them. Indeed not a very proper queſtion for a Biſhop to determine: The Examination of the Charge and Defence was committed to ſeveral Lords Temporal, named in the Record; But it muſt be obſerved, though theſe Lords managed the Cauſe, found the Towns upon Examination, not of neceſſity, but wilfully delivered, and agreed what Judgment ſhould be pronounced againſt them: Yet obſerve, their Anſwers were put in full Parliament. When the Judgment was pronouncing, there was likewiſe ſitting a full Parliament, which the *Octavo* doth wilfully omit. And the Record further ſaith, that they were brought before the *Seigniors* in Parliament, *Friday* the 27. of *November*, and again, before the ſaid Lords, *Saturday* the 28. of *Nov.* That all this while in the Record, there is no mention of the Names of any particular Lords; ſo that we hear nothing yet in the Record, but of a full Parliament, Seigniors in Parliament, which are the moſt comprehenſive terms, and can, and do include Biſhops, and ſtrongly intend them included. He that ſaith all, excepts none;

the

the Record ſaith, that when the Judgment was to be pronounced, *Les Seigniors dudit Parliament ceſtaſcavoir*, and then names the Duke of *Lancaſter*, Earls of *Cambridge*, *March*, *Arundel*, *Warwick*, *Stafford*, *Suffolk*, *Salisbury*, *Northumberland*, Lord *Nevil* and *Clifford*; and other Lords, Barons and Bannerets being then in Parliament, had met and adviſed upon the matters before. Theſe Lords agreed it ſeems the Judgment for the whole Houſe, and it was pronounced in full Parliament; and that in the Names and Authority of the whole Parliament. Pray let it be obſerved, that when the Record ſpeaks of Seigniors, in the firſt part of it, no Lords are named, and ſo all intended; when afterwards he mentions the Lords, the Record ſaith *avantdits*, or foreſaid Lords, and no Lords named yet, ſo that all the Lords of Parliament are then likewiſe included: But when he names the Lords that had adviſed, there is no *avantdits*, or aforeſaid. Though the *Octavo* puts the *avantdits*, or the *aforeſaid* to the named Lords, to the purpoſe, that it may ſeem, that no Lords were preſent in this Cauſe before in Parliament, but thoſe named and mentioned, amongſt the which there were no Biſhops, againſt the Faith of the Record. To the Record I appeal; *Rot. Parl.* 1 *R.* 2. *Mem.* 5.

The next is Sir *Ralph Ferrers* his Caſe, 4 *R.* 2. He was brought into Parliament, and there tryed for Treaſon, in holding intelligence with the

French. The Entry is, *It ſeem'd to the Lords of the Parliament, that the ſaid Sir* Ralph *was innocent.* This teſtimony too is *argumentative*, and concludes Biſhops not there, becauſe not expreſly mentioned, as they were in *Alice Perries* Caſe, 1 *R.* 2. I never could have a good opinion of a cauſe, that hath nothing but *argumentative* proofs, for this reaſon; becauſe there are more things poſſible than ever happen'd; but a reaſoning Witneſs is always accounted a willing Witneſs, and therefore a Witneſs *ſuſpectæ fidei*; but moſt certain, a Witneſs with a reaſon His teſtimony is no better than his reaſon. But I pray muſt the Entries of the Clerks be ſo nicely weighed? Are they ſo oracularly penned, that every *iota* of the Journal muſt comprehend a Myſtery of State, and carry in it the very conſtitution of the Government? muſt that be ſuch and no other, than ſhort or large Entries make it? Muſt a Criticiſm upon the Clerks form of Entry alter and refix the Government? muſt it change and be ambulatory at the haſte or leaſure, the ſhort or more large Entry of the Clerk? Did ever any wiſe man, before this Criticiſer, ever determine queſtions of the greateſt moment upon ſuch trifling conſiderations? or ſuſpend the moſt *momentous concerns* of a Nation, the very Government it ſelf, upon ſuch a very ſlender thread? But to leave no ſcope for ſuch Cavillations, we will turn him to the *Parl. Rolls* of 14 *E.* 3. Were not the *Grants* the Biſhops, as well

well as the Temporal Lords? Are not both Biſhops and Peers called Seigniors? Are not Seigniors and *Grants* of the ſame import? And as certainly this *argumentative* teſtimony makes no credit to the Cauſe, nor to the Author of the *Octavo* who produc'd it.

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and made indiſputable, but are to be expounded by an eaſy interpretation; ſuch as we uſe, when we make fair conſtructions in common ſpeech: But to give this another Anſwer, The Arguer is herein guilty of that fallacy which they call μετάβασις εἰς ἄλλο γένος, or *non cauſa pro cauſa*; And his Witneſs doth not ſpeak *ad idem*. The Biſhop was an Eccleſiaſtical perſon, and though the Biſhops might try a Temporal Lord for the ſame offence, yet they would not conſent to try a Biſhop, and forgo that great priviledge of the Clergy, with ſo much earneſtneſs defended in that Age, to be exempt from *ſecular Judicatures*. They would not be preſent to try, becauſe of the perſon of the Defendant, which cannot be drawn into Argument, to prove that they had no cognizance of the Cauſe, with any fairneſs.

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Right; And the Caſe of the Biſhop of *Norwich* is only an omiſſion conſiſtent with a Right.

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In his obſervations of the Parliament of the 15 *E.* 3. the Biſhops he ſaith vaniſhed like lightning, they went away immediately at the opening. That *matters of the Peace* in general were to be treated of (wherein Blood and Member might not at all be concerned, for all that appears.) They went away and (as he would have it) they returned no more: and they muſt not hear ſo much as a Commiſſion of the Peace read.

But here in this Case of *Rikehill* they may examine a Murder. He will say (I am sure) that though the Bishops did examine it, they could make no judgment of the matter. But who will believe him? In the Case of *de la Zouch* and *Gray*, he observes that Bishops could not be present so much as at a Battery, though there was no Battery in the Case, and yet he allows them to judge of all misdemeanors in the same little Book.

I observe but these things, of many more of like nature, which the Reader may observe of himself, in that little *Octavo*; that the World may judge, how unjustly he deals in this Cause: with what iniquity and prevarication he manages a noble question of Right concerning the Government of the Kingdom. With what petulancy, spight, and inveterate displeasure, he useth the Bishops. That he is grinning at them, whetting his teeth, and squinting upon them perpetually with an evil Eye. He oppugns their Right with Cavillations upon the Clerks Entries, with what is in the Record, and what is not, and what he is pleased to add of his own upon them, and with Precedents that reprove one another. Had it not been more fair for him to have stated the Right upon a probable result of all the Records considered together, than to make their Right sometimes more, sometimes less, sometimes to affirm, sometimes to deny their Right, in the same little *Octavo*?

He

He cannot ſure think that every Judgment that hath been given upon deliberation in the greateſt Judicature, can uncontroulably make the Law; much leſs a Fact, much leſs an Omiſſion, a Negative that can operate nothing. If nothing be Law but what hath always and conſtantly been done in the ſame manner and form, and all circumſtances the ſame, as this Author it ſeems would have it; and nothing true Theology (according to *Vincentius Lirinenſis* his Rule) but what hath been received *ab omnibus, ubique & ſemper*, We can have no Law, nor no Theology. Vain and idle opinions muſt be diſcharged, ſuch as can have no conſideration with wiſe men; and the Law muſt be declared by the Nature of Government, reaſon, and the general order of things. But we have made too long an Excurſion, We muſt return to a further conſideration of *Rikehill* his Caſe.

And now I ſubmit it to any impartial man, whether the Judge could be arreſted and brought under an Arreſt into the Parliament, and be examined and not accuſed.

The very next Caſe he recites is that of *John Hall*, in which we find nothing but an Examination and confeſſal; upon which he was condemned as a Traytor. And ſo would it have fared with Sir *William Rikehill* without doubt, if he had been guilty and had confeſſed. Neither the *Octavo*, nor Sir *Robert Cotton* mentions any formality more againſt the one than the other.

The Houſe of Lords are not tyed to Formalities in their proceedings like other inferior Judicatures: and the more inferior any Court is, the more regular forms are exacted, and that with great reaſon, which we will not here treat of. Beſides, in the Caſe of the Earl of *Northumberland*, recited in the *Octavo* Book, *Fol.* 34. in 5 *H.* 4. a Judgment was given againſt him for an offence upon a petition, which he exhibited for a pardon of the ſame offence.

But in the Caſe of the Earl of *Northumberland*, I pray obſerve what the *Octavo* ſaith in reference to our queſtion. After he hath recited part of the Record in theſe words; [The Petition being read and underſtood, the Lords as Peers of Parliament, to whom ſuch Judgment doth of Right appertain, did give their Judgment.] He concludes that the Biſhops could not be ſaid to be his Peers, which ſhews they were not there. But he muſt give us leave with much better Logick, to conclude, that they were preſent; and We with reaſon preſume, becauſe they are Peers of Parliament (for ſo the Record is, not *his* Peers, for he fallaciouſly changeth the Terms) they were there, except he can prove them abſent, if common Right is not Reaſon of preſumption, no preſumption can be reaſonable. But we can prove to him they were there. And thereby in conſequence, we have another proof that they are Peers.

Sir

Sir *Robert Cottons* Abridgment tells us 5 *H.* 4. *Fol.* 426. that at the ſame time the Arch-Biſhops and Biſhops, at their own requeſt, (and therefore certainly then preſent) were purged from ſuſpicion of Treaſon by the ſaid Earl. And at the ſame time, I pray obſerve, Sir *Henry Piercy* his levying of War was adjudged *Treaſon* by the King and Lords in full Parliament. Note, that here is ſaid to be a full Parliament, and yet nothing in the Entry, but the ſtile of Lords. So various and contingent in reſpect of form are the Entries; which ought to be obſerved.

But to review and conſider again the Caſe of *John Hall* condemned in Parliament for Treaſon, for murdering the Duke of *Gloceſter*. And to this place I have reſerved the Caſe of the two Merchants that killed *John Imperial* an Ambaſſadour of *Genoua*; for both Caſes are of the ſame nature, and muſt receive the ſame anſwer; and that is this. The Statute of the 25 *E.* 3. was made to declare certain matters Treaſon, and to be ſo judged in ordinary Judicatures: but withal that Statute did provide, that if any other Caſe, ſuppoſed Treaſon, do happen, it ſhall be ſhewed to the King and Parliament, whether it ought to be judged Treaſon. Concerning which the King and Parliament do and are to declare by their Legiſlative power, as it is agreed by all, and as they did in the Caſe of *John Imperial*, as appears by that Record expreſly. So that though the Biſhops were not preſent at the Judgment of

John Hall, they might have been (it must be confessed by our Adversary) if the Judgment against *John Hall* was by the Legislative Power, as it must be. By this it appears how false an Argument this of his is, To conclude no Right from absence; for it is plain, it proves too much, it proves a thing notoriously false, a thing false by the confession of our Adversary: and from what any falshood may be inferred, is not it self true, but stands reproved by the falshood and absurdity of what follows in consequence thereof. But this is too Solemn a Reproof of so frivolous an Argument, for it is no more in effect than this: That no man can have an Authority, but what he is always in the exercise of.

The *Octavo* goes on, and remembers that in the 2 *H.* 4. the first Writ *de Hæretico comburendo* was framed by the Lords Temporal only; and without question it was so. For the order of proceedings in Case of Hereticks Convict, so required it. The Bishops are upon the Matter, the *pars læsa* in Heresy. The authority of the Church is therein offended, and it was not therefore proper for an Ecclesiastick to be an Actor therein.

The Author doth improve this, as he doth all things that he can with any manner of colour, to render the Order of Bishops hated, and disesteemed, which is the publick establishment, the legal provision for the Government and guidance of Religion. What mischief then is he a doing?

How

How great is his fault to deprave that proviſion, to deſtroy their Reputation and Eſteem with the people, to deſpoil them of all authority as much as in him lyeth? His utmoſt endeavours are not thereto wanting, to make their Miniſtries uſeleſs, and to fruſtrate the proviſions of the Law, and the care of the Government, in the higheſt concernment of the Nation. Doth this become a great man, I will not ſay a good man? God rebuke him. To leſſen the Authority, and diſrepute and diſhonour any Order of men, or any Conſtitution, that can be any ways uſeful to the publick, is a great fault: but this of his, is a moſt enormous offence.

But what can be inferred from hence againſt the Order of the Biſhops, may be with like unworthineſs inferred againſt the Chriſtian Religion it ſelf. For it may be as well concluded, that the Chriſtian Religion is a bad Religion; for that men of that denomination in the general Papal Apoſtaſie, by pretence of Warranty from that Religion, though it gave none, murdered innocents: As that the practices of the Biſhops of that Religion ſo depraved, do reflect any diſhonour againſt the Biſhops of reformed Chriſtianity. And this Anſwer will ſuffice too for the Caſe of Sir *John Old-Caſtle*.

As for the Earls of *Kent*, *Huntingdon* and *Salisbury*, the Lord *le Deſpencer* and Sir *Ralph Lumley*, before that, executed and declared Traytors in Parliament by the Lords Temporal only, in the

the Parliament of the 2 *H.* 4. and the Earl of *Northumberland* & Lord *Bardolph*, againſt whom it was proceeded in a Court of Chivalry after their death, who were declared Traytors after they were dead, in the Parliament in the 7 *H.* 4.

I hope the *Octavo* Gentleman, and all that are at preſent of his Opinion, will take this for a ſufficient Anſwer (if we had no more to ſay) that it was irregular, very irregular indeed, to condemn men after they were dead; when he himſelf would for ſuch a pretence ſet aſide the Authority of the Caſe of *William de la Poole* in 28 *H.* 6. in Parliament where the Biſhops were preſent: which though he ſaith is the ſole ſingle precedent of Biſhops acting in Capital Cauſes, We ſhall therein convict him to be a man of Will, to have loſt himſelf in his paſſions, and his ὀλιγοσοφία. And enter that Caſe with a cloud of other teſtimonies and reaſons that affirm, I will not ſtick to ſay, demonſtrate, (ſo as ſuch matters can be demonſtrated) with a moral demonſtration, ſuch as ſhall leave no doubt with any man, of the Biſhops Right of judging in Capital Cauſes in Parliament.

But We ſhall further add for Anſwer that the Temporal Lords did not herein exerciſe the Office of a Judge. For it could be no Judgment they delivered. It was only an officious declaration, an avowing of the juſtneſs of the ſlaughter of theſe great men, and to enter themſelves of the other ſide.

But

But is it unreaſonable for this Writer, to think to fore-judge the Biſhops of this their Franchiſe, and to have it ſeized, becauſe they would not be guilty of a miſuſer thereof, and would not conſent to ſo inſolent a thing as to judge men unheard, nay when dead, and they could not be heard? And to kill over again the murdered Lords, for ſo they are in conſideration of the Law, who are not by legal proceſs condemned and executed.

I cannot but obſerve in many of the great convulſions of State, and the *ſimultates* amongſt the Great men, and extravagant exceſſes of injuſtice, to the glory and honour of the Biſhops it muſt ever be remembred, that they did preſerve themſelves from being ingaged in ſuch violences as were committed againſt the laſt mentioned Lords.

But that the Author of the *Octavo* ſhould produce the Caſe of Sir *John Mortimer* againſt us, who was condemned upon a bare Indictment without Arraignment or due Tryal (a good reaſon why the Biſhops were not there) when he immediately after produceth the Caſe of the Duke of *Suffolk* wherein the Biſhops were preſent, and will have it ſtand for nothing, becauſe in that, it was irregularly proceeded, is monſtrous partiality and iniquity. But in what I pray was the irregularity in the Caſe of the Duke of *Suffolk*? Why, becauſe the Commons deſired he might be committed upon a general Accuſation: But he was not. And the ſecond irregularity was, that ſome Prelates and ſome Lords ſhould be ſent down

down to the Houſe of Commons, which is often done. But it is not the Prelates that he is thus concerned for, but that the Lords leſſened their Eſtate. This (to excuſe him) might make him very angry with that Caſe and quarrelſome. And yet after all there is a fallacy in the Caſe of Sir *John Mortimer* which he would put upon us, for Sir *John Mortimer* was condemned by Act of Parliament; and therefore the Biſhops might have been there if they had pleaſed, and that with his leave. For it was by the Duke of *Gloceſter* (who in the Kings abſence was commiſſionated to call and hold that Parliament) by the Advice of the Lords Temporal, at the prayer of the whole Commonalty in this preſent Parliament, and by the Authority thereof, ordered and decreed, that he ſhould be led to the Tower, and from thence drawn to *Tyburn*.

I cannot therefore but obſerve how by the pretence of the Canon a σοφὸν φάρμακον ſometimes, and by other prudent Arts and Receſſes from tumultuations, the Biſhops kept themſelves often from being engaged in the Animoſities of Great men againſt one another: A matter remarkable for the commendation of their Exemplary Wiſdom and Juſtice, and a Recommendation of the men of that Order to be continued in the greateſt truſts that the Government hath committed to them.

But now ſhortly and ſummarily to review what we have offered in the matter of Precedents, and together to conſider what true value and weight

weight they are of, in the Caſes of *Roger Mortimer* and *Haxey*, and of Sir *John Mortimer*, 2 *H.* 6. every body may ſee a reaſon why the Biſhops ſhould not act, if they had Authority, and therefore without wilfulneſs it cannot be concluded they had none. Who ſees not that theſe Caſes are Precedents for us? for that the Biſhops judged in the Reverſal of the Sentence againſt *Haxey*, which if they had reaſon for it, they ought to have affirmed. And the Biſhops might have been preſent rightfully at the undoing the Attainder of *Roger Mortimer*, by the Confeſſions of theſe Authors.

The Proceedings in the Parliament of 15 *E.* 3. is a true argument only of the Biſhops modeſty. But they prove more than he is willing to prove, if true, *viz.* that the Biſhops cannot joyn in making Laws to puniſh publick Crimes, and therefore logically conclude nothing; beſides that the matter is falſe in fact, as it is alledged.

The Caſes of Sir *William Thorpe* and Sir *Ralph Ferrers* (taken at beſt for him) are but militant, and have as much to ſay for, as againſt the Biſhops being there preſent. But to be true to the cauſe of the Biſhops, We have this advantage againſt him, that the Biſhops were always in the poſſeſſion of their Right, becauſe never fore-judged, and it was once theirs, as we ſhall prove by and by: And this makes a preſumption that they always uſed it, when there is nothing to the contrary.

The

The Biſhops were not preſent in the Biſhop of *Norwich*'s Caſe: but the Biſhops may be at any time abſent upon a *ſontica Cauſa*. The defendant was a Biſhop, which was a very allowable one in thoſe times. But this muſt be conſidered with the Caſe of *Thomas Arundel* Biſhop of *Canterbury*, in whoſe judgment they were preſent virtually by their Proxy; and therefore had a Right to be there.

The Caſe of *John de Gomenits*, and *William de Weſton* is unduely, and againſt the faith of the Record produced againſt us; for upon the truth of the Record the Biſhops were preſent, notwithſtanding any thing that can be from thence deduced to the contrary.

The Caſe of Sir *William Rikehill* 1 *H.* 4. is for us, ſo is the Caſe of the Earl of *Northumberland* 5 *H.* 4. The Caſe of *John Hall* who murdered the Duke of *Gloceſter*, and of the two Merchants that killed *John Imperial* the *Genoua* Ambaſſadour, 3 *R.* 2. are foreign to this queſtion, and ſo is the Caſe of Sir *John Mortimer*, except Judicial Authority and Legiſlative Authority in Blood, are of the ſame conſideration, as I think they are, and ſhall hereafter make out to be probable: and then thoſe Caſes are for our Right.

They confeſs that the Biſhops might have been preſent if they pleaſed, and their abſence at the paſſing of thoſe Bills doth not conclude againſt their Right, themſelves being Judges.

The

The Writ *de hæretico comburendo*, is of another conſideration, and doth not fall in with the preſent queſtion. There was no Judgment given, or to be given, in the Caſes of the Earl of *Huntingdon*, *Kent*, *Salisbury*, Lord *Le Deſpencer*, Sir *Ralph Lumley*, the Earl of *Northumberland* and Lord *Bardolph*.

All theſe Precedents, ſuch as they are, happened in no long Tract of time, but very tumultuous; Not one of them pretends to be an excluſion of the Biſhops upon Judgment or poſitive declaration of State. They pretend to be only inſtances of Omiſſion, or *non uſer*, which may well conſiſt with a Right. And yet contrary to the true import of theſe Precedents, and the true Nature of them, being only of Omiſſion and abſence of the Prelates; which as they are, can make no induction or eſtabliſh any propoſition, whereupon to frame an Argument or conclude a preſcription; beſides that a preſcription is not poſſible in a meer negative, and to and of nothing, except it be to a liberty of uſing or not uſing this Right and Authority. And where no body can uſe or poſſeſs that Authority in pretence in the defailance of the party to uſe it, whoſe Right it was. Beſides that it is not a preſcriptible matter (which we ſhall further explain hereafter) it being in a matter of the Government, and a Right ariſing from its conſtitution: Contrary, I ſay, to the whole nature of the matter, He makes this Argument; *à ſæpe facto ad jus valet argumentum.* His Argu-

ment ſhould have been (if agreeable at all to the matter) this, That where a right is ſometimes not uſed, there can be no Right. But if this had been ſaid in *Engliſh*, every body would have condemned his reaſoning, and diſallowed, if not laughed at the Argument.

So that we have left this Author neither Reaſon or Argument. We have ſtript the Cauſe of all the Precedents that pretend to favour it, and have left it *Rara Avis* indeed, but not *nigro ſimillima Cygno*, as the learned Author in *Octavo* hath it, with which he reproaches the Right of the Biſhops as aſſiſted only with a ſingle Precedent: But to a Bird of no colour at all, the bird in the Fable I mean, *furtivis nudata coloribus*, to be expoſed to laughter with its naked Rump.

CHAP. IV.

BUt if theſe Precedents had been all ſuch as they pretend to be, and the Biſhops not preſent in Judgment, in any of thoſe Caſes which the *Octavo* and *Folio* have produced, and if they had been all Capital Cauſes that came in Judgment in that Houſe, and all determined judicially, and not by the Legiſlative power of Parliament, and no reaſon was to be aſſigned for the Prelates abſence from the Nature of the Cauſe: If they had had no inducements to withdraw,

draw, from any diſſatisfaction they had in the proſecution, and the pretended Right of the Church-men (in thoſe days much inſiſted upon) to be exempted from the juriſdiction of ſecular Courts, had not been the Cauſe of their abſence, which ſuppoſitions are not ſo in fact: And tho' the Biſhops had never uſed the Authority and Power in queſtion as they have; yet if we can prove they had once a Right, thoſe Omiſſions of theirs, can be no prejudice to the meer Right. (Though then (I confeſs) we ſhould labour againſt an invincible prejudice in the Opinions of moſt.) 1. For that no man can loſe a Right by not uſing of it, but where that right can be uſurpt by another, and is ſo: And that uſurpation having been for immemorial time, when no body can tell when it was otherwiſe, ſhall in a matter preſcriptible be intended to be acquired by good Right; and that with great reaſon, in favour of poſſeſſions and the quieting of them; for that Eſtates and Rights can laſt longer than the Grants and Evidences or Records themſelves, that firſt created them. But not where the nature of the Right is ſuch as this of the Biſhops in pretence is, which no body can uſe for them. For the Temporal Lords ſit in Judgment in their own Right, which is a plenary and compleat right, and cannot be made more or leſs. Secondly, for that no Franchiſe (from the Power and Authority upward of a Court Leet, which can be neither more nor leſs by uſage) other than the Law hath

eſtabliſh't, can be preſcribed to: And a *Quo Warranto* will fore-cloſe and extinguiſh an immemorial uſage of any irregular and illegal Franchiſe. Thirdly, A Right that can never be prejudged and fore-cloſed by *non uſer* (and ſuch is every Right that grows from the conſtitution of the Government,) though it ſhould be diſcontinued for a long tract of time, may be at any time rightfully and legally recontinued.

The happineſs of our Caſe is, that we can point to the time when the Right of the Prelates to ſit in Judgment in Capital Cauſes in Parliament, was eſtabliſhed; And which is more, impoſed upon them, and they put under a Compulſory, and obliged by the Tenure of their Lands to ſerve the Crown in that capacity. And that was in the beginning of the Reign of *William* the Conquerour: Mr. *Selden* in his Titles of Honour, with great probability hath fixed it in the 4th year of his Reign, when he made the Biſhopricks and Abbies ſubject to Knight ſervice in chief, by creation of new Tenures upon them, and ſo firſt turned their poſſeſſions into Baronies, and thereby made them Barons of the Kingdom by Tenure. This he ſaith is juſtified by *Mat. Paris*, and *Roger* of *Windover*, out of whom *Mat. Paris* took this Relation. *Anno* 1070. (ſo are their words) *Rex Willielmus peſſimo uſus conſilio Epiſcopatus & Abbatias omnes quæ Baronias* (that is by Anticipation; for the Lands after made Baronies) *tenebant in purâ & perpetuâ, & eatenus*

ab

ab omni ſervitute ſeculari libertatem habuerunt, ſub ſervitute ſtatuit militari,&c. This he makes further probable, for that in a Manuſcript Copy, which he uſed, in a very antient hand, theſe words are noted in the upper Margin over the year 1070. *hoc anno ſervitium Baroniæ imponitur Rameſiæ.* It ſeems, ſaith he, the Volume belonged to the Abby of *Ramſey*; And ſome Monk of the Houſe noted that in the Margin, touching his own Abby, which equally concerned the reſt of the Abbies that were mentioned in that Relation; by their Lands being put under the Tenure by Barony, and they made Barons, they had a Right to ſit with the reſt of the Barons in Councel or Courts of Judgment; For ſaith Mr. *Selden*, *tenere de Rege in capite*, *habere poſſeſſiones ſicut Baroniam*; and to be a Baron, and to have Right to ſit with the reſt of the Barons in Council or Courts of Judgment, according to the Laws of that time are *Synonymies*. So that there were no diſtinctions of Barons, as to power and Authority, or Juriſdiction; but the Right of a Baron was the ſame, whether he was a Temporal or Spiritual Baron, for the Tenure of both is one and the ſame, and therefore the Services muſt be the ſame.

The office of both (that is, the reſult of this Tenure) is the ſame in the Houſe of Lords, and indeed no office can be leſs than what the Law appoints it. The King cannot make a Peer, a Judge or a Biſhop, and put any Reſtraint upon

the exerciſe of the powers, and the *jura ordinaria* that belong by the appointment of the Law to a Peer, Biſhop or Judge. That it is an office by Tenure, can make no difference, for the Law declares the Power and Authority: So that the Powers of all Barons are and moſt be equal, and what is allowed to one Baron cannot be denyed to another.

William the Conqueror made the Biſhops Barons. By putting them to hold as by Barony, he did not intend only the Biſhops more honour, but himſelf alſo more ſervice, and better aſſured. He cannot be intended (eſpecially) to abate them their ſervice in punitive or vindictive Juſtice, which a Conquerour of all other performances cannot want.

I do not doubt, and if it were not unneceſſary to this queſtion, I would ſhew that before the Conqueſt, the Biſhops or Spiritual Lords had a great ſhare with the *Thanes* or Temporal Lords in the Government, and were then one of the three States, agreeable to all the *Gothiſh Saxon* (for the *Saxons* were *Goths* which we muſt not here inſiſt upon) and Modern Governments that have been planted in *Europe*, which we ſhall ſpeak to more hereafter: But we will reſort no higher, than this of their becoming Barons by Tenure in time of the Conquerour, for the clearing of the Prelates Right now in queſtion. And therefore we are not concerned to ſay any thing to the Caſe of *E. Godwin*, mentioned in the *Octavo*, in *Edward* the Confeſſor's time:

time: neither ſhall we, becauſe for Brevity ſake, we will not paſs the Limits of our own Arguments, otherwiſe we had much to ſay againſt the Authority of that Story, as it is by the *Octavo* mentioned.

To this day, neither in Record or Hiſtory, have we heard of any the leaſt pretence of any ſpecial abatement made of any ſervice, due by the *Tenures by Barony*, to any Biſhops or other Spiritual Baron by the Conquerour at the time of the creating thoſe Tenures; neither did the Biſhops when they would fain have been excuſed from judging in Blood ever pretend it; or make any ſuch excuſe, that their Tenures did not oblige them thereto.

They have ever been eſteemed to have power of Judgment in Capital Cauſes in Parliament: and in a long tract of time, it hath been ſeveral ways uſed and acknowledged. Their Right is ſo far from being fore-judged, that it never till of late was brought in queſtion. They have pretended ſometimes that they ought not to uſe that Right in obſervation of the Canon Law, and have made their proteſtation according; whether of neceſſity or choice ſhall be conſidered. They were upon the ſcore of the Canon Law indulged in the Statute of *Clarendon* from being preſent and aſſiſting in giving the Judgment of Death and mutilation of Limb, yet their Right was not by that Statute deſtroyed or hurt, it put them only at liberty to uſe it, or not: but put no

obligation or legal reſtraint upon them not to uſe it. That Law was in favour of their Liberty, not a Reſtraint upon their Right.

The words of that Law that concern this queſtion, we ſhall here ſet down. *Archiepiſcopi, Epiſcopi & univerſæ perſonæ Regni qui de Rege tenent in capite, habeant poſſeſſiones ſuas de Rege ſicut Baroniam, & inde reſpondeant Juſticiariis & miniſtris Regis, & ſequantur & faciant omnes conſuetudines regias, & ſicut cæteri Barones debent intereſſe judiciis Curiæ quouſque perveniatur ad diminutionem membrorum vel ad mortem.* Whether theſe words are words of Liberty or Reſtraint, of prohibition or indulgence and favour, as alſo how far this Favour, Liberty or Indulgence did extend, will appear clearly by conſidering the occaſion of the Law, and the Hiſtory of thoſe times, for whoſe ſake it was made, and upon what inducements, and how far they did uſe this their Liberty afterwards.

It is notorious that the deſign and endeavour of ſome Biſhops of that age, and before from the days of *Gregory* the ſeventh, was to eſtabliſh an Eccleſiaſtical Monarchy in the Pope; to make themſelves the Grandees of another Kingdom, they endeavoured to exempt themſelves from all Civil ſubjection, as alſo from being any part of the Civil Government, over which their Church Empire was to rule and domineer. They looked upon their Baronies to be marks of Slavery, and inconſiſtent with their deſigned Church-Empire,

by

by which they were kept in ſubjection to the Government, and made a part of it, which was deſigned by the Conquerour, but moſt ſharply complained of, as may be ſeen in *Mat. Paris*. *Rex Willielmus peſſimo uſus conſilio Epiſcopatus ſub ſervitute ſtatuit militari, & rotulas hujus Eccleſiaſticæ ſervitutis ponens in Theſauris, multos viros Eccleſiaſticos huic conſtitutioni peſſimæ reluctantes à Regno fugavit.* If the Biſhops then had been ambitious and deſirous, that they might be as the reſt of the Barons were, Judges in the Kings Court, then it is true that the word *quouſque* muſt be a word of Excluſion, & that their pretence of judging was fore-cloſed as to all matters under the *quouſque*. For if I ask a thing which is not my right, that which is not granted is denied, and by ſuch denial (in caſe of a Law declared,) the more unlawful. But this cannot poſſibly be, for they were already Barons, and Judges as other Barons. This they reckon'd a ſervitude, and was matter of grievance and complaint: But the Aſſiſe of *Clarendon* did proceed from the King, for the aſſerting his Soveraign Power, to reſiſt the deſign of the Papal Monarchy and to oblige the Biſhops to continue part of the Government, and to tye them to the duty of their Tenures. *Gervaſius* tells us, *Col.* 1386. that the Biſhops did not know what the *Conſuetudines Eccleſiaſticæ* in the Aſſiſe of *Clarendon* were, but they imagined them to be evil, becauſe the King did ſo much inſiſt upon them. *Neſciebant* (ſaith he

he ſpeaking of the Biſhops) *hucuſque quæ eſſent illæ conſuetudines, ſed pravas eſſe ſuſpicabantur, et quod tantâ inſtantiâ peterentur.* But the King commanded as followeth, *ſapientiâ provectiores, ite diſquirite Avi mei conſuetudines, ut in ſcriptum redactæ deducantur in medium & publicè recenſeantur, quas cum ſeorſum veteres actus & pravitates*; ſo he calls the Statutes of *Clarendon, in ſcripta reduxiſſent, hæc tandem ſcripta modo Chirographi protulerunt*, which the Arch-Biſhop was required to ſeal as the cuſtom then was in paſſing of Laws. It is likewiſe evident in the very Aſſiſe of *Clarendon*, that the Biſhops were then Barons, and ought to do the office of a Baron, and were by being Barons Judges, and ought *intereſſe ſicut cæteri Barones Judiciis Curiæ Domini Regis.* But how far they ſhould by that Statute be bound hereafter, this Law was to determine: In conſequence the *Quouſque* is but a Clauſe of Liberty (at moſt) and the matter under it, left to choice. A privi-ledge indeed the Biſhops might hereby obtain, to judge, or not to judge in Cauſes of blood, which they uſed in all after-times, as they pleaſed, as they did more or leſs regard the Canons, as either they did or were thought to intend. Their right of judging was not hereby fore-cloſed, but eſtabliſht, for the words are *debent intereſſe.* The *Quouſque* is a Clauſe of exception, and leaves them in that matter at large, and favours not at all of a prohibition. But though the Biſhops might have ſuch a Liberty, by the Letter of the

Aſſiſe

Aſſiſe of *Clarendon*, to judge, or not to judge at all in capital Cauſes, which doth not at all impair their Right, but that notwithſtanding they may uſe their rightful authority, when they pleaſe: Yet the Biſhops did not intend themſelves further priviledged by this Law, than that they ſhould not be obliged to be preſent at the pronouncing of the ſentence, which appears by the Canons that have been made about this matter in *England*, which we ſhall mention hereafter, which would have been moſt peremptory in their prohibitions and very ſevere in their denouncing Curſes, in a matter of this nature, as far as they had the Laws on their ſide. As alſo by the Practice of the Biſhops in thoſe times, which appears by *Peter Bleſenſis*, whoſe words are, *Principes ſacerdotum & ſeniores populi*, (by which he means the Biſhops, who from the dignity and worthineſs of their Order are called *Seniores*, a note of dignity in all Countries, in all Ages, which I obſerve becauſe ſome are ſo ignorant as not to know it, and think the Laity is meant by *ſeniores populi*, but if the Lay Barons had been guilty of that, which he there complains of, as well as the Biſhops, he would inſtead of this complaint, declaim'd againſt the folly and madneſs of the Age, for want of juſtice) *Licet non dicłent judicia ſanguinis, eadem tamen tractant diſputando, & diſceptando de illis, ſeque ideo immunes à culpâ reputant, quod mortis aut truncationis membrorum judicium decernentes, à pronuntiatione duntaxat*

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& executione pœnalis ſententiæ ſe abſentent. And it is moſt obſervable, that the Biſhops did never excuſe themſelves from Seſſion in Criminal Cauſes, by virtue of the Aſſiſe of *Clarendon*, but from the inhibition of the Canon; and beſides the uſe of the Liberty will beſt declare the Nature of it.

CHAP. V.

IT's moſt remarkable for the underſtanding aright the true meaning of this Law, that the Biſhops were admitted Judges in Parliament without exception of the Temporal Lords, in the Caſe of *Thomas Becket* accuſed of Treaſon, though the King and Temporal Barons had reaſon to believe, that the Biſhops would not do right to the Crown againſt that unruly and rebellious Prelate: and when the Biſhops themſelves would have been glad of that pretence to have withdrawn themſelves. And this was about eight Months after the making the Statutes of *Clarendon*; And in a ſhort time after the ſwearing the obſervance of them by all the *Grants* of the Kingdom. But the Law was then ſo well underſtood (however the Letter of the Statute makes matter of diſpute now) that it was by no body in the leaſt pretended, that it was to be underſtood to ſuch a ſence, as it is now drawn to: *viz.* to exclude the Biſhops

Biſhops the Spiritual Barons from judging in capital Cauſes in Parliament. In thoſe times they had only ſuch an underſtanding as we have here before offer'd.

We ſhall therefore now proceed to give you an account how in the courſe of time the Right of the Prelates hath been uſed and recognized. We will begin with the Caſe of *Becket* Arch-Biſhop of *Canterbury*, at a Parliament held in *October*, in the 11 *H.* 2. *Anno Domini* 1165, at the Caſtle of *Northampton*. To this Parliament Arch-Biſhop *Becket* was cited as a Criminal, and had not his Summons as Arch-Biſhop (ſo that that Parliament ſeem'd to be conven'd for doing him Juſtice; the Offence muſt therefore be very great; ſo *Stephanides* tells us, as he is cited by Mr. *Selden* 707.) Though he was wont of cuſtome to have the firſt Summons by the Kings Writ. *Nec tunc enim* (ſaith he) *nec diu ante ei ſcribere voluerat, qui eum ſalutare nolebat. Nec aliam per literas ſibi directas ſolennem ac primam, ut antiquis moris erat, habuerat Archiepiſcopus ad Concilium citationem.* *Becket* was there accuſed of Treaſon, *læſæ majeſtatis coronæ*, ſaith *Fitz-Stephen* a Monk of *Canterbury* that attended *Thomas Becket* the Arch-Biſhop in his troubles. Biſhop *Godwin* in his Book *de Præſulibus* tells us that Arch-Biſhop *Becket*, *Omnia ſibi cernens infeſta, Naviculâ apud Rumenegam conſcenſâ, in Galliam profugere conatus,*

tus, ventis adverſantibus in littus repertus ac deprehenſus ad Regem, Conventus Northamptoniæ agentem, adductus eſt. Ibi, repetundarum, peculiatûs, perjurii, proditionis, falſi & neſcio quot aliorum Criminum, cum à cæteris proceribus tum & Epiſcopis ipſis ſuffraganeis, reus factus. This Court is called a Parliament by Mr. *Selden*, and *magnum Concilium* by *Roger* of *Hoveden*, and by others as Mr. *Selden* ſaith; But that it was a Parliament and not the *Curia Regis*, which we ſhall ſpeak about hereafter, doth appear by this certain diagnoſtick, *viz.* that the Biſhops were Summoned hereto by perſonal Writ of Summons to them directed immediately, at that time, which appears by what is before cited out of *Fitz-Stephen*, and what is after taken out of *Gervaſius*. But to the *Curia Regis* they were Summoned by the Sheriff by a general Writ, to him for that purpoſe directed, which is a diſtinctive Note and Character of a Parliament, as will hereafter appear.

But *Fitz-Stephen* ſaith, as Mr. *Selden* quotes him, Titles of Honour, *Fol.* 705. that *ſecunda die conſulentibus Epiſcopis & Baronibus Angliæ omnibus.* Nay he is ſo exact in his obſervation, that he tells us who was not there of the Biſhops, *viz. Roffenſis Epiſcopus, & quidam alius nondum venerat. Hoveden* tells us, how *Becket* had before behaved himſelf towards the King, that notwithſtanding great endeavours

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used on the Kings part, to reconcile *Becket* to himself, He would not be reconciled to the King. *Post multum tempus*, saith *Hoveden*, *Ernulphus Lexoviensis Episcopus venit in Angliam, & sollicite laboravit die ac nocte, ut pax fieret inter Regem & Archiepiscopum, sed ad plenum fieri non potuit. Deinde per consilium Lexoviensis Episcopi Rex separavit Rogerum Archiepiscopum Eboracensem, & Robertum de Welun Episcopum Herefordiensem, & Robertum Lincolniensem Episcopum, & alios quosdam Ecclesiæ Prælatos à Consortio & Consilio Cantuariensis Archiepiscopi, ut per illos præfatum Cantuariensem Archiepiscopum in suos Conatus facilius alliceret. Deinde venit in Angliam quidam vir Religiosus dictus Philippus de Eleemosyna missus à latere Alexandri Summi Pontificis & Cardinalium omnium ad pacem faciendam inter Regem & Archiepiscopum Cantuariensem. Per quem summus Pontifex & omnes Cardinales mandaverunt Cantuariensi Episcopo, ut ipse pacem cum domino suo Rege Angliæ faceret, & Leges suas sine aliquâ exceptione custodiendas promitteret: his igitur & aliis magnorum virorum Consiliis acquiescens, Thomas Cantuariensis venit ad Regem apud Woodstock, & ibi promisit Regi, & concessit se bonâ fide & sine malo ingenio leges suas servaturum. Et paulo post congregato Clero & populo Regni apud Clarendon, pœnituit Archiepiscopum quod ipse Concessionem illam fecerat Regi, & volens resilire à pacto, dixit*

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ſe in illa Conceſſione graviter peccaſſe, & quod in hoc amplius non peccaret. Rex plurimum in iræ adverſus eum commotus, minatus eſt ei & ſuis Exitum & Mortem. Venerunt ergo ad Archiepiſcopum Salisburienſis & Norwicenſis Epiſcopi, & Robertus Leiceſtriæ & Reginaldus Cornubiæ Comites, & lachrymantes provoluti ad pedes Archiepiſcopi petebant, ut ſaltem propter honorem Regis veniret ad eum & coram populo diceret ſe Leges ſuas recepiſſe. Precibus igitur tantorum virorum Archiepiſcopus victus venit ad Regem, & coram Clero & populo dixit ſe Leges illas quas Rex avitas vocabat ſuſcepiſſe, & conceſſit, ut Epiſcopi Leges illas ſuſciperent, & ut illas cuſtodire promitterent. Tunc præcepit Rex univerſis Comitibus & Baronibus Regni, ut irent foras & recordarentur Legum Henrici Regis Avi ſui, & eas in ſcripto redigerent. Quod cum factum fuiſſet, præcepit Rex Archiepiſcopis & Epiſcopis ut ſigilla ſua apponerent ſcripto illi; & cum cæteri proni eſſent ad faciendum, Archiepiſcopus Cantuarienſis juravit quod nunquam ſcripto illi ſigillum ſuum apponeret, nec leges illas confirmaret.

If this was not an encroaching Royal power, there was never any ſuch fault, when he was grown ſo great that the King himſelf muſt ſupplicate; that the great men of that time, though paſſionately interceding on the behalf of the King, could obtain no peace for the King. That an Ambaſſadour from the

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Pope and Cardinals muſt be ſent to command him to be reconciled to the King. That he did make a ſhew of being the Kings Friend, and did promiſe to be at Peace with the King and keep his Laws, at the Popes Command. But of this too he ſoon repented, and ſaid he would ſin no more. Was not this man a Traytor at Common Law before the 25 of *Ed.* 3. doth not the reaſon of the Government declare and pronounce him ſo? And doth the *Octavo* Author think that a Parliament would not uſe the declarative Power by that Statute reſerved, to declare ſuch offences as theſe, Treaſon? If the like Caſe ſhould happen, would not he himſelf be the likelyeſt man to be foremoſt in the Impeachment? But *Gervaſius Dorobernenſis* goes on and tells us, that afterwards *Becket* did voluntary Penance, for the aforeſaid promiſe made to the King, and of his Submiſſion to his Laws, and ſtood out in diſobedience. That the King did caſt about and ſtudy, *quomodo vel qua arte conſtantiam Archiepiſcopi conterere valeret, vel elidere virtutem*, Col. 1388. But ſee in what reſpectful terms their Author in the mean time ſpeaks of this *Becket*. We may be ſure, we can have nothing from them, that is not true, if it makes the Cauſe of this contumacious rebellious man bad. But at laſt the Kings patience is turned into Anger. For *Gervaſius* goes on, *Col.* 1388. and ſaith, *Timens autem*

Rex Angliæ, ne impune manus ejus Cantuarienſis Epiſcopus evaderet, jam edoctus multiplici Cogitatione & pravorum Eruditione quibus eum pravitatis laqueis innodaret, Præcepit Præſules & Proceres Regni, apud Northamptoniam unà cum Archiepiſcopo ipſo convenire, qui cum tertia die conveniſſent, Archiepiſcopus in multis eſt accuſatus. And no man can believe his Accuſation was leſs than Treaſon, that will believe what is ſaid by all Hiſtorians of *Beckets* Rebellious behaviour againſt the King, and the Kings anger conceived againſt him, his threatning him with death, and the convening of this Parliament, leſt he ſhould eſcape unpuniſht: And eſpecially that will obſerve the partiality of this *Gervaſius* againſt the King, and in favour of *Becket*. For he ſaid, as is before obſerved and cited, that now the King was *edoctus multiplici cogitatione, &c.* that now the King with much thought, and the Advice of wicked men was inſtructed how he might enſnare him with evil Arts, and for that purpoſe this Parliament was convened. And yet in particular this *Gervaſius* and *Fitz-Stephen*, his faithful Friend, who accompanied *Becket* in his troubles, mentions only two faults, whereof he is accuſed, *viz.* of injuſtice in the Caſe of *John Marſhall*, and of his own Contumacy in not obeying the Kings Summons. *Fitz-Stephen*, *Hoveden*, and *Gervaſius* tell us, that to the two particulars *Becket* made his defence

Gervaſius

Gervaſius and *Hoveden* tells us what defence he made, which the *Octavo* hath faithfully tranſcribed, to do him right: (I wiſh he had obſerved the whole ſtory, then he would have ſaved me this trouble of bringing it into the view of the World.) The Article wherein he is charged, for not doing Juſtice to *John Marſhall*, is anſwered by laying the fault upon *Marſhall* himſelf, for abuſing the Court, bringing *veterum Cantuum Codicillum*, to ſwear upon, refuſing to ſwear *ſub Evangelium*, *ut moris eſt*. The other Article he anſwered, proving by two ſufficient Witneſſes, that it was Sickneſs hindred him and he not in any contempt; Very ſufficient Anſwers to thoſe two Articles, and certainly the Parliament that was called only for to puniſh *Becket*, might have well acquitted him and returned home, and a weighty cauſe indeed this was to convene a Parliament.

But theſe were but two of thoſe many things (for *multis eſt accuſatus* ſaith *Gervaſius*) and of the leaſt offence (beſides that they were fully anſwered) in any mans judgment that hath read the Story of *Becket*, of which he ſtood accuſed. By what I have here tranſcribed it appears, that he was certainly guilty of Treaſon. That the Parliament was called to puniſh him: The King was enraged and that juſtly, and therefore he was moſt certainly accuſed of Treaſon. *Gervaſius*

goes on and tells us, that *his rationibus* (meaning that he offered in excuſe of himſelf in the buſineſs of *Marſhall* and his own contempt) *Archiepiſcopus excuſari non potuit, ſed Curiali judicio, & Aſſenſu Epiſcoporum condemnatus eſt, ita ut omnia ejus bona in miſericordia Regis ponerentur.* And yet the proſecution went on. The Biſhops are conſulted with by *Becket*, how he ſhould behave himſelf. Thus *Gervaſius* tells us, *Col.* 1398. You may beſt underſtand the Nature of the proſecution and *Beckets* danger, by the advice of ſome of his Suffragan Biſhops. The Biſhop of *London* thus adviſeth, *Si pater, inquit, recolis, unde te Dominus Rex ſuſtulit, quid tibi contulit, conſideratâ temporum malitiâ, quam Ruinam Eccleſiæ & nobis omnibus paraveris, ſi in his Regi reſiſtere volueris, non ſolum Archiepiſcopatui Cantuariæ, ſed in decuplo, ſi tanti fuerit, cedere deberes.* Could all this danger grow from leſs than Treaſon? Could a bare neglect to anſwer a Summons, where he excuſed his default ſufficiently, or refuſing to proceed in the Caſe of *Marſhall*, for that he did preſumptuouſly trifle with the Court, and Profanely offered to be Sworn upon a Song-book, put the whole Church and himſelf in danger big enough to be redeemed with ten times the value of the Biſhoprick of *Canterbury*.

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The Biſhop of *Lincoln* ſpeaks in *Gervaſius* theſe Words: *Patet, inquam, vitam iſtius hominis & ſanguinem quæri, & neceſſario alterum horum erit, aut Archiepiſcopatui aut vitæ cedendum.*

The Biſhop of *Exeter* thus: *Palam eſt quoniam dies mali ſunt, & ſi poſſumus ſub diſſimulationis umbrâ, hujus tempeſtatis impetum pertranſire illæſos.* And after he ſaith, *ſatius eſt unum Caput in parte periclitari, quam totam Anglicanam Eccleſiam inevitabili exponere diſcrimini.*

The Biſhop of *Worceſter*, ſaith *Gervaſius*, being asked what he thought, *ita temperavit Reſponſum, ut & negando palam fecerit, quid animi haberet.* The Biſhop of *Ely* was ſick. The Biſhop of *Norwich*, the ſame Author ſaith, excuſed himſelf, *ſecreto aſſerens Elienſem fœliciter adeò defenſum, & quod ipſe vellet ſimili plagâ percelli*, for he had heard, ſaith our Author *quid Rex conceperat contra Cantuarienſem.*

Becket not reſolved what to do, deſired of the Earls of *Leiceſter* and *Cornwall*, that he might have time until the morrow. And the morrow being *Sunday*, time was given until the *Munday*, and then the Biſhops came to *Becket* and adviſed him, for avoiding danger and ſcandal, to ſubmit himſelf to the Kings Will; which if he ſhould not do, *jam audierint in Curiâ Regis perjurii Crimen ſibi imponi, & tanquam proditorem judicandum, eò quod terreno Domino honorem terrenum non ſervaret, cum avitas conſuetudines*

ſuetudines Regni obſervaturum firmaſſet, ad quæ ſpecialiter obſervare jurisjurandi nova ſe & illos aſtrixerat Religione. And now ſure it will be believed that *Becket* was accuſed in this Parliament of Treaſon, for Treaſon was his Crime, not allowing the King, with the conſent of his States, to make any Laws, but ſuch as he ſhould approve, aggravated with Perjury, for he had ſworn himſelf to obſerve them.

After *Becket* had given the Biſhops an obſtinate and reſolute Anſwer to adhere to his Treaſonable Practices, to diſallow the Authority of the King and States in the Laws called the Aſſiſe of *Clarendon*, and to oppoſe the obſervance of them; Obſerve what *Gervaſius* ſaith, *diſceſſerunt Epiſcopi ad Curiam properantes.* By and by *Becket* comes too (but the Biſhops were there before him) carrying the Croſs himſelf, which the King, as well as the Biſhops, took to be a coming Armed. Upon which, ſaith *Gervaſius*, *vocatis Epiſcopis & Proceribus gravem & grandem Rex deponit querimoniam, quod Archiepiſcopus ſic armatus in Curiam veniens ipſum & ſuos omnes, inauditâ ſeculis formâ, nævo notaverit proditoris.* Whereupon the Biſhops by the Mouth of *Hilaris Ciceſtrenſis* a Biſhop more eloquent than the reſt, thus ſaid to *Becket*, *Quandoque, ait, fuiſti Archiepiſcopus, & tenebamur tibi obedire, ſed quia Domino Regi fidelitatem juraſti, hoc eſt vitam, membra & terrenam dignitatem ſibi per te ſalvam fore, & conſue-*

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tudines quas ipſe repetit conſervandas, & tu niteris eas deſtruere, cum præcipue ſpectant ad terrenam ſui dignitatem & honorem; idcirco, te reum perjurii dicimus, & perjuro Archiepiſcopo de cætero obedire non habemus.

This I take to be a judging in Treaſon. But this the Biſhops did for their part, as Biſhops and Suffragans they did withdraw their obedience from their Metropolitan, which was (as much as in them lay) to deprive him: A conviction it was of the Guilt, not indeed *judicium ſanguinis.* But this is not all; for obſerve what our ſaid Author ſaith further, they going away, the King ſaith to them, *diſcernite quid perjurus & contumax proditor debeat ſuſtinere. Itur & judicatur, & à quo vel qualiter judicium pronuntiandum eſſet, informatur.* In which matter *Stephanides*, as he is cited by Mr. *Selden* in his Titles of Honour, in the *Folio* Edition, *fol.* 705. tells us, how it was conſulted and debated between the Biſhops the Spiritual Barons, and the Temporal Barons, for ſaith he, *de proferendo judicio diſtantia fuit inter Epiſcopos & Barones, utriſque alteri illud imponentibus, utriſque ſe excuſantibus. Aiunt Barones, vos Epiſcopi pronuntiare debetis ſententiam, ad nos non pertinet, nos Laici ſumus, vos perſonæ Eccleſiaſticæ ſicut ille, Conſacerdotes ejus, Coepiſcopi ejus. And hæc aliquis Epiſcoporum, Imo veſtri potius eſt hoc officii, non noſtri, non enim eſt hoc judicium Eccleſiaſticum ſed Seculare, non ſedemus*

hic Episcopi sed Barones, Nos Barones & vos Barones, pares hic sumus. Ordinis autem Nostri rationi frustra innitimini, quia si in nobis ordinationem attenditis, & in ipso similiter attendere debetis, eo autem ipso, quod Episcopi sumus, non possumus Archiepiscopum & dominum nostrum judicare. By which dispute (by the way) it doth appear that both the Bishops and Temporal Lords did take themselves to be equally constituted Judges and Peers, by reason of their common Baronage, in this Case of *Becket*, a Cause of Treason; the Bishops owned and avowed a Right of judging him as Barons, They did not excuse themselves upon the score of the Canon alledged, but from the indecency in respect of the relation that they stood in to the Criminal, he being their Superiour and Metropolitan, they seem'd willing to decline the making of the Sentence. Whether any Judgment was pronounced, by whom, or what the Judgment was, is not certain, the Historians differing thereupon; But when he went out of the Court he was call'd by the People as he past, Traytor and perjured Traytor, as the King before had called him.

And if this be not the cleareſt proof of *Beckets* being accused of Treason, and the Bishops judging in a Capital Cause in Parliament, there can be nothing proved to satisfaction: Besides that all that writ of his Story are unwilling Witnesses, they magnifie, excuse and justifie

juſtifie the man all along, extolling his virtues. They call him Saint, *Pater Patriæ* (ſo *Gervaſius* does *Col.* 1393.) and Martyr.

Let the Reader conſider what is here faithfully recited, and then let him tell us what Opinion he hath of the Candor of the *Octavo* Gentleman, who could find no fault in *Thomas Becket*, for he ſaith, *Folio* 62. That *Gervaſius Dorobernenſis* ſaith, that *Becket* was charged with two things; Injuſtice to *John Marſhall*, and his own contempt in not appearing to the Kings Summons: This Author had nothing of his own knowledge to charge upon him, and ſaith, that *Stephanides* is not to be regarded becauſe he was *Beckets* friend, and an obſcure *Author*, it may be not yet come into his Study.

The Author had reaſon to ſee no faults in *Becket*, or to forget them all for the good ſervice the inſolencies of that man hath done towards the Scandal of the Order.

But we have not miſpent our own time, neither will the Reader regret our length in this matter, for this ſingle Caſe conſider'd, gives a Reſolution to the Queſtion; and puts the Right of the Biſhops to ſit in Capital Cauſes out of all doubt. This Caſe will let in light for the true underſtanding of the Aſſiſe of *Clarendon*.

For it muſt be noted that the Great Parliament of *Clarendon* was held by *Henry* the 2*d.* about the latter end of *January*, in the tenth year of his Reign; the Biſhops and Lords were all

all Sworn to obſerve the Statutes there made (called the Aſſiſe of *Clarendon*) called the *Avitæ conſuetudines Regni*, of which the Law afore-mentioned was one.

This Law therefore muſt be interpreted in ſuch a ſenſe, for that the words will bear it, and can be intended in no other than that which may conſiſt with the proceedings in the Caſe of Arch-Biſhop *Becket*, and with the Oaths of all the Biſhops and Peers, and the great men, taken but a ſhort time before, to obſerve the Statutes of *Clarendon*: Now if the whole Order of Capital Cauſes had been intended to be excepted by that Statute above recited (upon which our Adverſaries do ſo much ground themſelves) from the Cogniſance of the Lords Spiritual, and they could not be preſent when any ſuch Caſe was agitated or moved, all the Grandees were Notoriouſly, Wilfully, and Knowingly, and in the face of the whole World Perjured to the Eternal infamy of our Nation.

Could the whole Nation be ignorant of its own Laws and Conſtitutions, made and ſworn to but a few Months before? And neither the King, Lords Spiritual or Temporal, or Commons underſtand them? 120 men at leaſt, (for about that number were the Biſhops and regular Barons in *H.* the 2*ds.* time and not leſs) now come into the higheſt Judicature in the greateſt Cauſe that ever was agitated. (It was

in the Case of *Becket* disputed whether we should have a Civil or Ecclesiastical Soveraignty) and there sit Judges, and no body except against them in *October*, if excluded by the Statute made in *February* before; though the King and the Nobles had reason to suspect them on *Becket*'s side, and they unwilling themselves to Judge, and they under an Oath not to sit, and the Temporal Lords under an Oath not to admit them or allow them to be there? And yet not a word of this matter in all the Historians of that time, *Thomas* of *Canterbury* his friends to a man, who were forward enough to reproach the Judges sure, when they condemned the Sentence, and applauded the Criminal, and made a *Pater patriæ*, a Martyr and Saint of this Notorious Church Rebel. He therefore that can believe that the Bishops were not rightful and unexceptionable Judges in Capital Causes in Parliament, in the time of *H.* 2. may believe that a whole Nation may become of insane Memory at once, go to bed a Monarchy and wake into a Common-wealth, without any notice or observation of a Change. And now that the Assise of *Clarendon* is of our side, I hope will be admitted, and that the Bishops not only may, but ought to be present in Capital Causes in Parliament, for the words of the Statutes are; That the *Archiepiscopi, Episcopi & universi personæ qui de Rege tenent in Capite, habeant possessiones suas de Rege sicut Baroniam,* &

& ſicut cæteri Barones debent intereſſe Judiciis Curiæ Domini Regis cum Baronibus. So that now they were declared to be Judges as the other Barons, in that they ought to be preſent in all Cauſes: Only they were favoured ſo much in decent regard to their Order, that they were not required to be preſent at the Sentence of Death and Mutilation of Member. For as much as they are the Miniſters of Gods Pardon, and the Publiſhers of the Doctrine and Faith of Repentance; they ought to comport with their office, and expreſs their Commiſeration to the greateſt Sinner, and to have ſome reluctancy againſt the Sentence of Condemnation, and to that purpoſe is that Indulgence given them in the *quouſque perveniatur ad mutilationem membrorum vel mortem.* But the Aſſiſe of *Clarendon* having (I will not only ſay left them, but) required them to be Judges (this exception of *Quouſque*, &c. being only an Indulgence as aforeſaid upon the Reaſons aforeſaid) they remain entire Judges in Capital Cauſes, and may depart from that Indulgence and ought ſo to do when Juſtice is neceſſary and the offences more than ordinarily Publick and will be Pardoned and eſcape with impunity to the hazard of the Government, except they interpoſe. For if the Aſſiſe of *Clarendon* had not left them entire Judges of Right, only at liberty as to the pronouncing of Sentence, they had not remain'd Judges; for the

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office of a Judge cannot be divided; he that hath not an Authority to judge the Cauſe, can be reckoned and accounted no other than a Miniſterial aſſiſtant to the proceſs, in ſuch matters as the Court ſhall award. Therefore Biſhops in that they have intermedled as Judges in ſuch Cauſes have continued and avowed their Right of judging, and in that they have withdrawn at the Sentence they have uſed that Liberty.

But to leave nothing for an after Objection, Evaſion, or Cavillation, it ſhall be in our Adverſary's choice, Whether this *Curia Regis* mentioned in the *Aſſiſe* of *Clarendon*, as alſo the Court that tryed *Thomas Becket*, was the *Curia Regis* wherein the ordinary Juſtice of the Nation was at that time adminiſtred, or the Parliament.

If the *Curia Regis*, and not the Parliament, was intended in the *Aſſiſe* of *Clarendon*, in which the Priviledge and Indulgence under the *Quouſque* was allowed to Biſhops; Then the Aſſiſe of *Clarendon* is unduly urged againſt the Biſhops judging in Caſes of blood in Parliament, for that all Laws of Priviledge and exemption are *ſtricti Juris*, and not to be extended beyond the Letter of the Law, the ſingle inſtance, or the enumerated Caſes; and conſequently by the Aſſiſe of *Clarendon* the Biſhops have no leave to withdraw in Caſes of blood in Parliament.

If

If the Court wherein *Thomas Becket* was Tryed was the *Curia Regis*, then the Biſhops judging in that Court in that Cauſe doth moſt clearly declare (that being a Caſe in point) that the *quouſque* in the Aſſiſe of *Clarendon* was an Indulgence and Priviledge, which they might wave or uſe as they then did.

But this cannot be denyed, that the Biſhops are and were Barons ever ſince the Conqueror, (of which, and of the *Curia Regis* we ſhall hereafter give an account) and whatever was the buſineſs and office of a Baron, was conſequently the office and buſineſs of a Biſhop of Common Right, and ſtill is, except any Legal reſtraint was put upon them by any Law, which was not done by the Aſſiſe of *Clarendon*, as we have proved from the reaſon of the making of that Law, and the Interpretation of that Law at that time. Nor was that Law or any other Law hitherto pretended (but only the Canons of the Church) againſt the Right and Duty of Biſhops judging in Capital Cauſes in Parliament, or if they will have it, in the *Curia Regis*.

CHAP. VI.

AND now we proceed further to ſhew how this Right and Authority of the Prelates hath been uſed and acknowledged in after-times.

Roger

Roger de Hoveden hath remembred in the Life of *Richard* the Firſt, who ſucceeded *Henry* the 2. That before the arrival of *Richard* the Firſt in *England* who had been in Captivity in the Empire, that one *Adam de* St. *Edmond*, Agent to *John* Earl of *Morton*, returned into *England*, being ſent to Fortifie the Caſtle of Earl *John*, againſt the King his Brother, and was apprehended by the Lord Mayor of *London*, with ſeveral papers of Inſtructions and Commiſſions of Earl *Johns* for that purpoſe: *Hoveden* tells us, That the Mayor *cepit omnia brevia ſua, in quibus mandata Comitis Johannis continebantur, & tradidit ea Cantuarienſi Epiſcopo, qui in craſtino convocatis coram eo Epiſcopis, Comitibus & Baronibus Regni, oſtendit eis literas Comitis Johannis & earum tenorem, & ſtatim per commune Concilium Regni definitum eſt, quod Comes Johannes diſſeiſeretur de omnibus Tenementis ſuis in Anglia, & Caſtella ſua obſiderentur.*

This is a Cauſe of Treaſon, for that *Richard* the Firſt immediately upon the demiſe of the Crown was King. It can be no objection that this was not a formal Parliament, for whether it was or no, it ſeems the Biſhops power in that Cauſe was allowed. That it was *Commune Concilium Regni*, and had the Nature of a Parliament. And that the Biſhops therein had a parity of Authority with the Temporal Lords. But ſoon after his return King *Richard* held a Parliament at *Nottingham*. *Hoveden* mentions the Biſhops that were preſent by

by Name. In which Parliament our Hiſtorian tells us, That the King *Petiit ſibi Judicium fieri de Comite Johanne fratre ſuo, qui contra fidelitatem quam ei juraverat Caſtella ſua occupaverat, & terras ſuas tranſmarinas deſtruxerat, & fœdus contra eum cum inimico ſuo Rege Franciæ contra eum inierat.*

And the like Juſtice he required againſt the Biſhop of *Coventry*, for that he had adher'd *Regi Franciæ & Comiti Johanni inimicis ſuis*; and it was thereupon adjudged, *Judicatum* (ſaith *Hoveden*) *quod Comes Johannes & Epiſcopus Coventrenſis peremptoriè citarentur, & ſi intra quadraginta dies non venerint nec Juri ſteterint, Judicaverunt Comitem demeruiſſe regnum, & Epiſcopum Coventrenſem ſubjacere judicio Epiſcoporum in eo quod Epiſcopus erat, & Judicio Laicorum in eo quod ipſe Vicecomes Regis extiterat.*

You ſee here the Biſhops Zeal and Loyalty, that they adjoyn'd the cenſure of the Church which they had power of as Biſhops, to a Civil puniſhment, which they with the Temporal Barons had Authority to pronounce againſt One of their own Order, who was guilty of a deſign to engage a Nation in a War by oppoſing the Lawful Succeſſour to the Crown; and this being ſo great a Cauſe, We hear nothing here of any ſcruple the Canon gave them, nor mention of any Priviledge of an Eccleſiaſtick to be exempt from the Judgment of the Secular Court.

In the ſame Parliament *Giraldus de Canavilla* was accus'd of harbouring of Pirates, and, *Præterea,*

rea, ſaith *Hoveden*, *appellaverunt eum de Læſura Regiæ Majeſtatis, in eo quod ipſe ad vocationem Juſtitiariorum Regis venire noluit, nec juri ſtare de prædictâ receptatione raptorum, neque eos ad Juſtitiam Regis producere, ſed reſpondet ſe eſſe hominem Comitis Johannis, & velle in Curiâ ſuâ Juri ſtare.* *Hoveden* tells us all, that were preſent at this great Council; *Hubert* Arch-Biſhop of *Canterbury*, *Galfridus* Arch-Biſhop of *York*, *Hugh* Biſhop of *Durham*, *Hugh* Biſhop of *Lincoln*, *William* Biſhop of *Ely*, *William* Biſhop of *Hereford*, *Henry* Biſhop of *Worceſter*, *Henry* Biſhop of *Exeter*, and *John* Biſhop of *Carliſle*, Earl *David* Brother of the King of *Scots*, *Hamelinus* Earl *de Warrenna*, *Ranulfus* Earl of *Cheſter*, *William* Earl of *Feriers*, *William* Earl of *Salisbury*, and *Roger Bigot*. Let any one judge, if it was likely that the Biſhops did withdraw, in the Caſe of Earl *John*, or the ſaid Biſhop, when beſides them there were but ſix Barons preſent at that Parliament. What manner of great Council would this Parliament have been, that had conſiſted but of ſix Barons? Of what Authority would ſuch a Parliament have been, in the abſence of the King, and a troubled Eſtate of the Kingdom?

CHAP. VII.

IN the time of *Edward* the Second, in the two Judgments againſt the *Spencers*, the Right of the Biſhops to judge in Capital Cauſes in

Parliament was carried so high in opinion, that their presence was thought necessary to give Authority and validity to the Judgment of the House of Lords in such Cases; and their absence was assigned for Error, for Reversal of those Judgments (for an Error that appears in the irregularity of the Proceedings, is an allowable Cause for vacating the Judgment by the same Court that gave it.) And so far did that Opinion prevail, that the presence of the Lords Spiritual was necessary to give Authority to a Judgment of that House, that for this Cause, because the Prelates were absent, that Judgment was reversed. Which opinion did arise upon this mistake, that because the Lords Spiritual was one of the two States that made the House of Lords, nothing could be done without their concurrence. But though they are a distinct State from the Temporal Lords, they make but one House, and they are both there under one Notion and Reason, *viz.* as they are both Lords Spiritual and Temporal, the Baronage of *England*.

But let any man tell me that can, whether if the Lords Spiritual had not been understood Judges in Parliament in Capital Causes, it could have been a question whether their absence could avoid the Judgment in the Case of the *Spencers*, much less that such an opinion should prevail, that the Judgment should be (as it was for that reason) reversed. And tho' the Reversal of that Judgment was set aside, and the Judgment affirmed in 1 E. 3. Yet the publick Recognition of the Bishops Right

Right in the Reverſal remains an undeniable Teſtimony to their Right of ſitting: Tho' the Reverſal of that Judgment was not warrantable, for the reaſon of the Biſhops abſence, as it could not have been reverſed by reaſon of the abſence of as many Temporal Barons if there remained enough beſides to make a Houſe to give the Judgment. And yet we find the Reverſal of the Reverſal reverſed in 21 *R.* 2. and the Family of the *Spencers* reſtored in the perſon of the Earl of *Gloceſter*. So prevalent was the opinion that the Biſhops Concurrence was neceſſary in all Capital Judgments in Parliament at that time. For this ſee Sir *Robert Cottons* Abridgment, *fol.* 373.

Yet it is obſervable that the conſequence from the Biſhops being a third State, and an Eſſential conſtituent part of that Houſe; to a neceſſity of their preſence in all judicial matters, even of Capital Offences and Treaſon, did ſo ſtick with that Age: for they then in that Age did no more know what two diſtinct States ſerved for, in that they both made but one Houſe, than ſome in our time can tell how to find them.

For that very Reaſon in 21 *R.* 2. the firſt Petition that the Commons made in that Parliament to the King was, for that divers Judgments were heretofore undone, for that the Clergy were not preſent. The Commons prayed the King that the Clergy would appoint ſome to be their Common Proctor with ſufficient Authority thereunto. The Prelates therefore being ſeverally examined, appointed

Sir *Thomas de la Piercy* to assent. The words of which Petition, and the Procuratory Letters, for greater Authority, and more satisfaction I have thought fit to transcribe. *Nos Thomas Cantuar. & Robertus Eborac. Archiepiscopi ac Prælati, Clerus utriusque Provinciæ Cantuar. & Ebor. jure Ecclesiarum nostrarum, & Temporalium earundem habentes jus interessendi in singulis Parliamentis Domini nostri Regis & Regni Angliæ pro tempore celebrandis, necnon tractandi & expediendi in eisdem quantum ad singula in instanti Parliamento pro statu & honore Domini nostri Regis, nec non Regalie ac quiete, pace, & tranquillitate Regni judicialiter justificandi, venerabili viro D. Thomæ Piercy..... Nostram plenariam committimus potestatem, ita ut singula per ipsum facta in præmissis perpetuis temporibus rata habeantur.*

The Commons of *England* knew what they said, and could not be mistaken in fact, we know of no Judgments reversed but those of the *Spencers*; But we have no Records or very few of the times before *Edward* the Third, transmitted to us, through the injury of the times, but they then had certainly whereupon they grounded their Petition, upon which the said procuratory Letters were made, which Petition here follows in *terminis. Mecredy prochein, ensuant les Communes monstrerent au Roy, coment avant ces Jeures plusieurs jugements & Ordinances faitez en temps des progenitors nostre Senior le Roy en le Parliement eiant estre repelles & adnulles pur ceo que l'estat de Clergie ne fust prest en Parliament a la faisaunce*

des

des dits jugements & Ordenances, & pur ceo prierent au Roy que pur ſurete de ſa perſonne & ſalvation de ſon Royalme les Eveſques & le Clergie ferroient un Procurator avec poiar ſufficient pur conſentir en leur noſme as toutes choſes & ordinances a juſtifieis en ceſt Parliament, & que ſur ceo cheſcun Signior eſpiritual dirroit pleinenent ſon advys. Sur qui les dits Seigniors Eſpiritual ſeveralment examines ſe conſenterent de Comettre lour plein poiar grantant en leurs parts & noſmerent on eſpecial Tho. Piercy *Chivaler & ſur ceo baillerent au Roy une Schedule contenant lour dit poiar, le quelle noſtre Seignior le Roy receuſt & commanda la dite Mecredy eſtre enter de record en Rol de Parliament; deque cela Schedule le form ſenſuit.*

But it is remarkable that this Petition was made in 21 *R.* 2. for that in the 11 *R.* 2. the Biſhops had made their Proteſtation, that by reaſon of a Canon they could not be preſent: The words of the proteſtation we ſhall here tranſcribe. *Per encheſon & certeins mattires feurent mouvez en ceſt preſent Parliament & toucherent overtement Cryme; L'archeveſque de Canterbiry & les autres Prelates de ſa province fierent une proteſtation en la fourme & paroles qui ſuent. In Dei nomine* Amen. *Cum de Jure & conſuetudine Regni Angliæ ad Archiepiſcopum Cantuarienſem qui pro tempore fuerit, nec non cæteros ſuos Suffraganeos, Confratres, & Coepiſcopos Abbates & Prioresalioſque Prælatos quoſcunque per Baroniam de Domino Rege tenentes pertinet in Parliamentis Regiis quibuſcunque ut Pares Regni prædicti perſonaliter intereſſe, ibidemque de Regni negotiis*

tiis & aliis ibi tractari consuetis, cum cæteris Domini Regis Paribus & aliis ibidem jus interessendi habentibus consulere & tractare, ordinare, statuere & definire, ac cætera facere quæ Parliamenti tempore ibidem invenerint faciend. in quibus omnibus & singulis nos Willielmus Cantuarien. Archiepiscopus totius Angliæ Primas & Apostolicæ sedis Legatus pro nobis nostrisque Suffraganeis, Coepiscopis & Confratribus, necnon Abbatibus & Prioribus ac Prælatis omnibus supradictis protestamur, & eorum quilibet protestatur, qui per se vel procuratorem hic fuit modo præsens, publicè & expressè, quod intendimus & intendi volumus, & vult eorum quilibet in hoc presenti Parliamento & aliis ut Pares Regni predicti more solito interesse, consulere, tractare, ordinare, statuere & definire, ac cætera exercere cum cæteris jus interessendi habentibus in iisdem, statu & ordine nobis & eorum cuilibet in omnibus semper salvis. Verum quia in præsenti Parliamento agitur de nonnullis materiis in quibus non licet nobis aut alicui eorum juxta Sacrorum Canonum instituta quomodolibet personaliter interesse, ea propter pro nobis & eorum quolibet protestamur, & eorum quilibet hic præsens etiam protestatur, quod non intendimus nec volumus, sicuti de jure non possumus nec debemus, intendit nec vult aliquis eorundem in præsenti Parliamento dum de hujusmodi materiis agitur vel agetur, quomodolibet interesse, sed nos & nostrum quemlibet in ea parte penitus absentare; jure Paritatis nostræ & cujuslibet eorum interessendi in dicto Parliamento quoad omnia & singula inibi exercenda nostro & eorum cujuslibet statui & ordini congruentia

tia in omnibus ſemper ſalvo. Adhuc inſuper proteſtamur & eorum quilibet proteſtatur, quod propter hujuſmodi abſentiam non intendimus nec volumus, nec eorum aliquis intendit vel vult, quod proceſſus habiti & habendi in præſenti Parliamento ſuper materiis auditis, in quibus non poſſumus nec debemus ut præmittitur intereſſe, quantum ad nos & eorum quemlibet attinet, futuris temporibus quomodolibet impugnentur, infirmentur ſeu etiam revocentur. Quelle proteſtation leu en plein Parlement al inſtance & priere du dit L'archeveſque & les autres Prelates ſuſditz & inrollez icy en rol du Parlement per Commandement du Roy & aſſent des Signiors Tempreles & Communes.

This the adverſaries of the Biſhops would have an Act of Parliament, for that at the Prayer of the Biſhops, by the Kings command, with the aſſent of the Lords temporal and Commons, it was inrolled; and for that all the formalities that were uſed in theſe times, in paſſing a Law, was only to have the matter ſhortly entred in the Roll, or Journal Book, that ſuch a thing was agreed upon by the King and two Houſes, which was drawn into the form of a Law afterwards by the Juſtices and Kings Councel when the Parliament was riſen; but this was never done in this Proteſtation, and therefore we might ſay that it is not to be taken for a Law.

But we will admit it to be a Law, yet it can be a Law only for that Caſe, and can be extended no further: Thoſe Biſhops proteſt; but for whom? For themſelves only, their own perſons,

not their ſucceſſors; that by reaſon of the inſtitution of the Canon they could not be preſent at certain matters to be treated of in the Parliament. What thoſe Canons were they do not tell us. They had no other reaſon but the Canon to pretend at that time. We hear not a word from them of the Aſſiſe of *Clarendon*: And what was it that they proteſted? Why only that they could not be preſent: at what? only at the matters aforeſaid mentioned in the Petition and in that preſent Parliament. But was this without any regard of their Right? No, they ſaved their Right, their *Jus Paritatis*: pray mark it: what then did they in effect depart from? nothing. They provided only that they might do nothing indecent or rather againſt their good liking, and at the ſame time conſulted likewiſe the ſafety of their Eſtate and Order, and preſervation of all their Rights.

But had they no care of the Authority of the Parliament in their abſence? yes, for they very well knew that it was a probable opinion that nothing acted in their abſence and during a receſs of their whole Order could be rate and valid; and therefore they provide *propter hujuſmodi abſentiam non intendimus nec volumus, nec eorum aliquis intendit vel vult, quod proceſſus habiti & habendi in præſenti Parliamento ſuper materiis auditis, quantum ad nos & eorum quemlibet attinet, futuris temporibus quomodolibet impugnentur, infirmentur ſeu etiam revocentur.*

Let the Impartial Reader Judge whether this be not a famous recognition of the Biſhops Right

of

of ſitting, what a ſolemn leave they had to be abſent, what proviſions made that the proceedings in that Parliament ſhould not be avoided and made null by their abſence; which implies a great probability, that that time allowed to the opinion of their being neceſſary in all proceedings in Parliament. Was there ever ſuch a proteſtation entred on the behalf of the Abſentees of Temporal Barons? This leave given them to be abſent is an allowance of Right to ſit. The proceedings they liked not and the Canon was pretended. Admitting this proteſtation to be an Act of Parliament, It is an Act of Parliament to give the Biſhops leave to be abſent *pro hac vice*, and to make Laws good that ſhould paſs in their abſence. I appeal to the World whether there can be a more Solemn and Authentick Recognition of their Right than this proteſtation imports.

CHAP. VIII.

IT does appear by the whole tenor of this their proteſtation, that the Canons of the Church, which they pretend, had not paſſed into Laws; if they had, what need of ſuch a warm proteſtation for the ſake of *decency* only and the *honeſty of their order*, to be rid of a troubleſom buſineſs? what means the ſaving of their right, if by Law it had been diſcharged? what means their further proteſtation that the validity of the proceedings in thoſe Cauſes in which they withdrew, ſhould

not

not be impeach't by their abſence, if their Right did not remain entire notwithſtanding the Canon? beſides that they do not alledge the Law but the Canons of the Church for their excuſe.

They well knew the nature of Canons, the force and obligation of them, and alſo that they were not under any obligation to the *Canon Law*, that it was only a Law in the Popes Temporal Principality, and had no Controul upon the Laws of this Kingdom.

For the clearing this queſtion it will not be unneceſſary here to ſpeak to the nature of Canons, what they effect and how oblige.

Canons therefore are no more Laws than the authority of the Church is Empire, no not in matters that are proper for their Canons. But moſt certainly they can neither make nor annul a Civil Right, nor do they pretend to alter or change Governments: they exceed their proper bounds when they intermeddle in any matters of this nature. But when they do extend themſelves beyond their bounds and order, and appoint in any matter of the Civil Government; they intend only to counſel and direct the man how he ſhould behave himſelf in the uſe of his Right, which every man may obſerve if he pleaſe. Their Subjects are *Populus voluntarius*, the Eccleſiaſtical Courts are Courts of *audience* in matters that belong to their cogniſance, and the Church's word is, *He that will hear let him hear.*

The Canons of foreign Councils tho' General, tho' we ſend thither our Delegates and Proxies

authorized by publick Inſtruments, and by conſent of Parliament, as has been ſometimes done, have not the conſideration of Canons, except received here and allowed by the ſame Authority, that makes the Canons of our Church.

Canons here muſt have the Royal aſſent at leaſt to make them Canons, but with the Kings aſſent they are void, if they alter or meddle with any Civil Right or Conſtitution. If any man is proceeded againſt in the Eccleſiaſtical Courts for being contrary in any thing to ſuch a Canon, our Courts will grant him a prohibition; if Excommunicate thereupon, award Writs to aſſoil him to the Biſhop, and ſeize his Temporalities if he do not conform.

Nothing can alter Civil Rights or Civil Conſtitutions but *Law*, and ſuch never were any Canons or ſo reputed; except the Decrees of Councils confirmed by the Imperial Reſcripts of the *Roman* Emperors, who by their Reſcripts made Laws by the Authority of the *Lex regia*, by which the people devolved their Right of Legiſlation to the Emperors: but when ſuch Canons were confirmed by the Emperor, they remained but Canons ſtill, the Canons were to be exacted by the meaſures of the Church and by the Church-men, the matters of ſuch Canons did not employ the *Forum*; no alteration was made in any Civil Right, but the Church had Authority to require obſervance of them, under the Cenſures of the Church.

About the 11*th* Century the Pope meditating the increaſe of his new Eccleſiaſtical Empire,

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(the *Roman* Empire being now extinct) did design to give Laws to the World: and to that purpose in imitation of the Imperial *Roman* Law, *Gratian* was appointed to compile a body of Laws accomodated to that design out of the General Councils, the sayings of the Fathers, and some decrees of former Popes, which made that part of the Canon Law which they call the *Decreta*, to answer to the Digest which was made up of the *Senatus consulta*, *Responsa prudentum* and the *Edicta Prætorum*; to which another Book was added of *Decretals* and *Clementines*, made up of the Popes *Decretal Epistles*, which answered to the *Codes* and *Novels* which was made up of the Edicts, Epistles and Decrees of the Emperors: For by the Constitution of the Senate of *Rome*, called *Lex Regia*, by which they gave the power of making Laws to *Augustus*, it was established, that *quicquid per Epistolam statuit, cognoscens decrevit, aut per edictum propalavit, lex esto.* And now there was such a thing as a body of *Canon Law*. The Pope had Power indeed to make these *Decreta* and *Decretalia* Laws in the *Domains* of the Church and the Patrimony of St. *Peter* in which he was a Temporal Prince; but it was further endeavoured by him to make them the Laws of the Christian World, and thereby to advance his pretended Oecumenical Empire, and he did so far prevail and advance in his design, that it was thought that *Rome* had again recovered the Empire of the World, and it was said with too much truth of her upon the growth of the Papal power,

--- *Quicquid*

— Quicquid non poſſidet armis
Relligione tenet. —

But tho' the Pontificial as well as the *Juſtinian Law* was publickly profeſſed in *England* before the end of the 12*th*. Century, for *Mat. Paris* tells us of a Monk of *Eveſham*, *Anno Dom.* 1196. that *ſuo tempore eorum quos Decretiſtas & Legiſtas appellant peritiſſimus habebatur, earum etiam facultatum auditores quamplurimos inſtituerat*, and from that time the ſtudy of the *Cæſarean* and *Pontificial Law* did flouriſh amongſt us, until the beginning of *E.* 3. But in all that time, ſaith Mr. *Selden*, in his *Fleta*, *gens ipſa Anglicana ac qui in judiciis præerant, morum patriorum* (viz.) *Juris Communis Angliæ per intervallum illud tenaciſſimi fuere.* A remarkable inſtance we have of this Nations ſteady averſion from admitting here either the Civil or Canon Law in the Parliament of *Merton*, which rejected a Bill for Legitimation of Children born before Marriage in Concubinate, in theſe terms: *Nolumus leges Angliæ mutari*, meaning that they would not make Laws conformable to the Civil or Canon Law.

The great Policy that the Popes uſed to effect their Ambitious deſign of making themſelves Monarchs of the Chriſtian World were: The aſſuming to themſelves the entire rule and Government of Religion; The endeavouring to make every where the Biſhops and the whole Clergy, together with the Regulars, dependant upon them by pretending them to be exempt from all Civil

Authority

Authority and Juriſdiction: and by interdicting to them the exerciſe of any Civil Authority, and ſhutting them out from all intromiſſions into the Civil Government, and from any intereſt or dependance thereupon. So far as he prevailed in theſe deſigns, he acquired an *Imperium in Imperio*; and if beſides theſe he could have fixt a Spiritual handle to the Temporal Sword, and have got the Government of ſecular affairs *in ordine ad ſpiritualia*; his deſign had been compleated, and he had arrived to a more abſolute and extenſive Empire than that of the *Roman Cæſars*.

To theſe purpoſes the Canon Law provided that the Eccleſiaſticks were neither to exerciſe, nor be Subject to any Civil Authority: But this Policy of the Pope had no ſucceſs in *England*, the endeavours of the *Papalins* herein met with conſtant oppoſition: and at laſt they were made deſperate by the Aſſiſe of *Clarendon*, where it was declared and enacted accordingly agreeable to the *Avitæ Conſuetudines Regni*, that the Biſhops ſhould be retained and continue to be a part of the Government, & exerciſe Juriſdiction in all Cauſes in the Kings Court as other Barons, as is before obſerved, and alſo that the Clergy ſhould ſtand ſubmitted to the Juriſdiction of the Kings Courts. For this purpoſe it was in that Parliament enacted as followeth: *Si controverſia emerſerit inter Laicos, vel Laicos & Clericos, in Curia Domini Regis tractetur & determinetur*, & alſo *quod clerici rectati & accuſati de quacunque re ſummoniti à Juſtitia Regis venient in Curiam Domini Regis reſponſuri ibidem*, &c.

And

And ſo far were the Biſhops and Clergy from obſerving that part of the Canon Law that was to detrude them from all ſecular Authority and Juriſdiction, that they were from time to time Chancellors, Treaſurers, Keepers of the Privy Seal and Judges, and while that Ancient Office continued of *Capitalis Juſticiarius Angliæ*, to whom was committed the Juſtice of the Kingdom, who were called *Cuſtodes Regni*, *Vice-Domini Angliæ*, & ſometimes by the abſtract *Juſtitia*, He did preſide in the *Curia Regis*, which office was afterwards divided, for there were *Juſtitiarii Angliæ Boreales*, & *Juſtitiarii Angliæ Auſtrales*, this Office was often executed by Biſhops as you may ſee in Sir *H. Spelmans Gloſſary*, in the word *Juſtitiarius*. Biſhops and Church-men adminiſtred the greateſt Offices of State & Juſtice: this was matter of Envy to the Temporal Lords, & they complain'd in Parliament 45 *E.* 3. (as is before obſerved,) That the Government of the Kingdom had been a long time in the hand of the Clergy. Mr. *Selden* in his *Fleta* tells us, that in the times before and after the Aſſiſe of *Clarendon*, *Mos fuit Judices Regios ex genere hieratico, veluti Epiſcopis, Abbatibus, Decanis, id genus aliis, conſtituendi.* And it is provided by 28 *E.* 1. *Cap.* 3. That if a Clergyman was a Judge of Aſſiſe, another ſhould be joyned in Commiſſion with him to deliver the Goals; which was to the end that the Eccleſiaſtical Judge might uſe that liberty which was indulged to him by the Aſſiſe of *Clarendon* of not pronouncing the Sentence; for it muſt be obſerved

ved that by that Statute a Clergy-man might be a Judge in a Goal-delivery; for that a Laick was by the proviſion of that Statute to be join'd to him in Commiſſion, and moreover Records of Pleas of the Crown are to be found, purporting them to be held before two Judges, whereof one a Clerk, after this Law, which could not poſſibly have been if the Clerk had not been in Commiſſion.

Beſides for after Ages it is well known that all the great Officers and Miniſters of State and Juſtice have been always intruſted with the conſervancy of the Peace, are in Commiſſions of the Peace, and Commiſſioners of *Oyer* and *Terminer*, for judging capital Cauſes; ſo that the conſtant practice in all times, as well as the expreſs declaration of the Aſſiſe of *Clarendon* doth aſſure us that the Canon Law that prohibits Clergy-men being Judges in capital Cauſes, was never received here or became the common Law of *England*.

Beſides what regard our Clergy had of the Canon Law, what opinion they had of the Right in queſtion, and how far the Laws did intend to prohibit the exerciſe of it; And that ſuch right was uſed and exerciſed, will appear by the Canon of *Toledo*, *Concil. Tol.* 11. *c.* 6. *f.* 553. and the Canon of *Lanfrank*, *Spelmans Concil.* 2 *vol. f.* 11. theſe were made before the Aſſiſe of *Clarendon*. That of *Toledo* is this. *His à quibus Domini Sacramenta tractanda ſunt, judicium ſanguinis agitare non licet & ideo magnopere talium exceſſibus prohibendum eſt, ne qui præſumptionis motibus agitati aut quod morte plectendum eſt, ſententia propria judicandi*

præſumant

mant, aut truncationes quaſlibet membrorum quibuſlibet perſonis, aut per ſe inferant aut inferendas precipiant. This being a Foreign Council, this Canon carries not with it the Authority of a Canon with us; only we may obſerve, whatever the Opinion of that Council was, that it was not convenient (for *licet* can have no other ſence here) for Clergy-men *agitare judicium Sanguinis:* Yet this Canon prohibits only the pronouncing the Sentence by themſelves or others. I am ſure, that by a poſitive Law, as this Canon muſt be, ſo far as it participates of the nature of a Law, nothing becomes unlawful, but what is forbidden, whatever the reaſon be of that Prohibition. That of *Lanfrank* follows thus; *Ut nullus Epiſcopus, vel Abbas, ſeu quilibet ex Clero hominem occidendum, vel membris truncandum judicet, vel judicantibus ſuæ authoritatis favorem accommodet.* This may be a Canon for all that I know; but I ſuſpect, it had never the Royal Aſſent to make it ſo, it not being likely, that the Conqueror would diſcharge the Biſhops from thoſe Services of the Crown, which he had ſo lately obliged them to, by his tenure; but ſurely it was never intended by this Canon, that the Prelates, and great Abbots ſhould, or that they did depart from their Royal Franchiſes, and not make their Officers for adminiſtring Juſtice according to their Authorities in their Charters of Liberties and Priviledges: For the words of the Canon, *Vel*

judicantibus ſuæ authoritatis favorem accommodet; if they ſignifie any thing more than what we allow muſt ſound to that purpoſe.

But I ſuppoſe the Gentlemen that appear'd againſt the Biſhops, had rather than affirm ſo againſt the known practice of all Ages, be content to agree, that this Canon did only intend to prohibit their pronouncing, or encouraging, or promoting the Sentence of Death, or Mutilation; and indeed this was all that truly could be pretended to from them, for comporting themſelves decently with reſpect (as the Opinion of thoſe times was) to their Function: which is expreſſed to be the Inducement to that Canon of *Toledo*, as it was the only avowed Reaſon of all others, that is, that it did not become (as they thought) thoſe that adminiſtred the Sacraments, which were the Seals of God's Pardon, to pronounce an exterminating Sentence of Life and Member. Though they might have a farther Secret purpoſe therein, of carrying on the Deſign of a Church-Sovereignty, by imbodying the Clergy, and dividing them from all Secular Dependencies; but this was not always to be owned.

Neither is it an agreable Employment to any perſon who pretends himſelf a Proteſtant, to urge theſe ill-deſigning Canons, as a pretence to diveſt the Biſhops of thoſe their Legal Rights which were ſo prejudicial to the high Growth of the Papal Power, upon any pretence whatſoever; or to

go

go about to deprave the Reformation, as if the true Christian Religion would not allow to the Bishops, Honors and Trusts as great as they now enjoy by the Constitution of the Government, who are the Chief Ministers of it which is a Religion that makes men wise and good. The Religion of the State, and is the greatest Support of it, and reciprocally this Religion it self, is honored, assisted, and greatly advantaged, for obtaining its ends by the Honors, and the place at present appointed to them in the Government.

But it is deplorable to find any man so madly set upon so bad a Design, that he should be thereby transported from Common Sence, and think to displace them, and degrade them by Popish Canons, that when they were made, did not oblige, were never observed, and can no more bind our present Church to observe them, than the Fathers of *Toledo*, or *Lanfrank*, and his *Suffragans* and Clerks, can be blam'd for not being agreable to the Canons that have been made since the Reformation, or hereafter shall be made by our Church, in any after Age of the World.

But there are two Canons yet behind, which have been mentioned in this Controversie, which we will likewise take notice of; or we shall have said nothing; though I almost despair, that any thing will be a Satisfaction to such Opposers as this Right hath met with-all.

The first whereof was made by *Richard*, Archbishop of *Canterbury*, *Anno Domini* 1175. in 21 *H.* 2. about Eleven Years after the Assize of *Clarendon*, in these Words, as *Hoveden*, p. 310. and *Gervas. Dorob.* relates them, *His qui in sacris Ordinibus constituti sunt judicium sanguinis agitare non licet; unde prohibemus ne aut per se membrorum truncationes faciant, aut inferendas judicent: quod si quis tale fecerit concessi Ordinis privetur officio & loco; inhibemus etiam sub interminatione Anathematis, ne quis Sacerdos habeat Vicecomitum, aut Præpositi secularis officium.*

The other was made *Anno* 1222, about 47 years after the first, which is to be found in *Linwood*, p. 146. among the Constitutions of *Stephen*, Arch-bishop of *Canterbury*, as follows, *Præsenti Decreto statuimus ne Clerici beneficiati aut in sacris ordinibus constituti villarum procuratores admittantur, viz. ut sint Seneschalli aut Ballivi talium administrationum; occasione quarum laicis in reddendis ratiociniis obligentur: vel jurisdictiones exerceant seculares, presertim illas quibus sanguinis judicium in locis sacris tractatur, in Ecclesia, viz. aut in Cœmiterio. Authoritate quoque Concilii districtiùs inhibemus ne quis Clericus beneficiatus vel in Sacris Ordinibus constitutus literas pro pœna sanguinis infligenda scribere vel dictare presumat, vel ubi judicium sanguinis tractatur vel exercetur interfit. Noverint, enim hujusmodi se Ecclesiastica indignos protectione cum per eos in Ecclesia Dei per talia presumpta scandalum generetur.*

Upon

Upon both theſe Canons, we obſerve, firſt, that the Pope's Canon-Law had not obtained in *England:* For then there had been no need of theſe Canons; or however their Denunciations and Cenſures would have been the ſame: That the Inhibition is repeated by a Second Council, but in milder Terms, ſignifies to me the Continuance of the thing prohibited; and that it was ſo much in uſe after the firſt Canon, that the ſecond Council thought fit rather to direct and admoniſh by their Canon, than to pronounce either *Anathema*'s, or deprivation againſt thoſe that break that Canon.

Secondly, That neither of theſe Canons extend to Biſhops; not the firſt, not only for that I queſtion whether Biſhops can be intended in ſuch general words, *In Sacris Ordinibus conſtituti:* But becauſe the Denunciation of the Canon cannot have effect as to them, no Eccleſiaſtical Authority can depoſe a Metropolitan. The Second cannot by any Conſtruction extend to them; for *Clerici beneficiati*, does not mean them; and that which comes after, *aut in Sacris Ordinibus conſtituti*, cannot aſcend in meaning, and intend the Biſhops, eſpecially in a Canon Law, which we muſt ſuppoſe penn'd with ſpecial Care and Obſervance of Decence and Reverence to that Order.

Now, to consider them apart, I find the first agreable to, and to prohibit no more than what the Bishops (if here meant) are licenced and priviledged from in the Assize of *Clarendon*: And to intend more, is unreasonable, when it was made in time so near to *Thomas* of *Becket*, that his Fate could not be at that time forgotten. And farther, we must distinguish between the Preamble, which contains the Reason and Inducement of a Law, and what is for that reason prohibited: For let the Reason be as large as it will, yet the Law is no other than what is enjoyned. Reason makes no Law, but the Legislators for Reasons which they may tell us if they please; though the Nature of Canons requires, that they should. The Preamble of this Canon, was an opinion taken up amongst some of the Clergy, *viz. Non licet his, qui in sacris ordinibus constituti judicium sanguinis agitare unde:* (saith the Canon) upon which it proceeds, *Prohibemus ne aut per se membrorum truncationes faciant*, (a very fitting Employment for a Bishop) *aut inferenda judicent*; and after all this, we have still our old Answer, upon which we will ever insist; it is but a Canon, and can make no Alteration in the Rights of Government.

For tho' *Gervasius Dorob.* tells us, *In hoc Concilio, ad emendationem Anglicanæ Ecclesiæ ad sensu Domini Regis, & primorum omnium Regni hæc subscripta promulgata sunt Capitula*; yet the Canons of this Council are not Laws: For that

our Hiſtorian tells us, it was convened by the Arch-biſhop, and ſo only a Provincial, but he does not tell us of any Parliament then held, or that thoſe Canons were confirmed in Parliament. And the good liking of Great Men out of Parliament, will not confirm, nay not juſtifie the Canons, if they cannot juſtifie themſelves in Parliament. Beſides, that theſe Canons were not made into Laws, we will offer two Reaſons:

Firſt, For that amongſt theſe Canons, there is one that diſpoſeth of the Right of Patronage againſt the Law, as it hath been before and ſince taken; and that is this, *Nulli liceat Eccleſiam nomine dotalitii ad aliquem transferre, vel pro preſentatione alicujus perſonæ pecuniam vel aliquod emolumentum pacto interveniente recipere: quod ſi quis fecerit & in jure convictus vel confeſſus fuerit ipſum tam Regia, quam noſtra freti autoritate patrocinio ejuſdem Eccleſiæ in perpetuum privari ſtatuimus*; which was never, moſt certainly Law.

Secondly, If this had been a Law, the other Canon before-mentioned, made by *Stephen*, Arch-biſhop of *Canterbury*, was idle; nay, preſumptuous, for offering to derogate from a Canon, made a Law about 47 years before: But however, Canons confirmed by Law, remain but Canons ſtill; and the Breach of them not puniſhed as the Breach of Laws, nor no Innovation made thereby, upon a civil Right; of which before and after more.

As to the Second Canon; we obſerve how dutiful this Canon in the Stile of it behaves it ſelf towards the Civil Government. That Clerks ſhould not exerciſe Juriſdiction where Judgment of Blood is to be given, under the ſoft word *Statuimus.* That they ſhould not *Literas pro pœna ſanguinis infligenda ſcribere*, that is, ſign an Order for the Execution of a Condemned Man, or be preſent at the Sentence, is under the *diſtrictius inhibemus.* But the doing of this, is not declared to be a Sin; he that is contravenient to the Canon, is not thereby to become irregular, to be puniſhed by his Superior, to incur Excommunication, or any Cenſure, the Clergy are not declared by this Canon to be incompetent Judges. It only declares them unworthy of the Protection of the Church; the meaning of it is, *Judge not leaſt ye be judged:* If you judge the *Laicks*, they will judge you. This is the Scandal by which the *Privilegium Clericale* will be loſt; So that upon the whole matter this Canon is but Advice and Counſel, and offers reaſons to the Choice and Approbation, rather than a Command, under the Authority of the Church in a Council. But let it be what it will, if the Canon had been moſt peremptory in its Prohibition, and had lighten'd and thunder'd in its Denunciations, it would have been of no force to alter the Government, or diſcharge a Judge from doing his Duty.

But

But this is farther to be duely obſerved, that this Canon could not be broken if the Law had not been otherwiſe than theſe Canons direct; and therefore theſe Canons produced by our Adverſaries, are the greateſt Teſtimonies to the Right we defend, and of a practice agreeable thereto. Doth not the Canon ſuppoſe, that a Beneficed Clerk, or one in Holy Orders, was ſometimes in Commiſſion for judging in Capital Cauſes? For certainly the Canon did not prohibit them to murder, or enjoin them not to write Letters to ſuborn men to kill. What then can be the meaning of the Canon but this, ſuppoſing a Beneficed Clerk to be made a Judge of Life and Death, to aſſiſt in a Commiſſion of *Oyer & Terminer*, or Goal-delivery, that he ſhould be enjoyned not to pronounce the Sentence, or to ſign the Order or Calendar for Execution. But if he were not a Judge, how poſſibly could he ſign an Order for Execution? By the other words of the Canon, *Nec interſit ubi judicium ſanguinis tractatur*; he can be forbidden onely to be preſent and aſſiſting as a Judge or Officer at the pronouncing of Sentence: for it can be no fault ſure, nor ever was intended by any Canon to be made one, for any Clerk to hear a Court pronounce a Judgment of Death or Mutilation, or to ſee a Malefactor executed.

What therefore can be more evident, than that the Biſhops did withdraw, not for want of Right of Seſſion, but they pretended the Canon becauſe

becauſe they did not like the Cauſes? But further, that nothing more than what we have ſhewed was underſtood to be done in that Proteſtation, by thoſe times (they muſt be allowed at leaſt to know their own Opinions) doth appear; for that notwithſtanding the Proteſtation of the Biſhops aforementioned, the great Council of the Kingdom did not think the Authority of a Parliament when the Biſhops were abſent unqueſtionable. This Opinion we do not go about to maintain, but this we conclude, that there could never have been ſuch an Opinion, if the Biſhops had been denied Right of Seſſion in Capital Cauſes in that time.

CHAP. IX.

THe Commons of *England* in the 21 *R.* 2. pray, that the Biſhops might make their Proxy; which they did thrice in that Parliament, once by Procuratory Letters to Sir *Thomas Percy*, as is before recited; and afterwards *William la Scroop* Earl of *Wilts* was made their *Procurator*; and a third time the Earls of *Worceſter* and *Wilts* were made their *Procurators*, in the matter between the two Dukes of *Hereford* and *Norfolk*.

That it may the better appear, that the Biſhops were virtually preſent by their Proxy, it ought to appear that they were allowed to make Proxies

Proxies, and that the Lords Spiritual did ſo as well as the Temporal Lords. The firſt mention of Proxies that occurs in the memory of our Parliaments is in the Parliament of *Carliſle* under *E.* 1. and that is of the Biſhops Proxies. The words are theſe; *Quia omnes Prælati tunc plenariè non venerunt receptis quibuſdam procurationibus Prælator. qui venire non poterant adjornantur.* And in a Parliament held at *Weminſter*, under *Ed.* 2. *dorſ. clauſo Ed.* 2. *m.* 11. the Biſhops of *Durham* and *Carliſle* remaining upon the Defence of the Marches of *Scotland*, are ſeverally commanded to ſtay there, and in the Writ this Clauſe was added to both of them, *Sed Procurat. veſtrum ſufficienter inſtructum, ad dictum diem & locum, mittatis ad conſentiendum his quæ tunc ibidem per prædictos Prælatos & Proceres contigerint ordinari.* Though generally Proxies were admitted to both Spiritual and Temporal Lords, yet when the buſineſs of the Parliament was extraordinary, the Writs of Summons both to the Prelates and Barons had a Premonition, that a Proxy ſhould not be allowed, unleſs they could not poſſibly be preſent, *dorſ. clauſ.* 6 *E.* 3. *m.* 36. *clauſ.* 1 *R.*2. *m.*37. 2 *R.*2. *m.*29. Nor was it unuſual with the Prelates to make ſuch their Procurators, who were no Members of that Houſe. In that Parliament of *Carliſle* under *E.* 1. the Biſhop of *Exeter* ſends to the Parliament *Heury de Pinkney* Parſon of *Haughton* as his Proxy. The Biſhop of *Bath and Wells* ſends *William of Charleton*

ton a Canon of his Church. In the Parliament 17 *R.* 2. the Biſhop of *Norwich* made *Michael Cergeaux* Dean of the Arches and others his Procurators. In the ſame year the Biſhop of *Durham* his Proxies are *John of Burton* Canon of *Beudly* and others. In the Statute of *Præmunire* 16 *R.* 2. *cap.* 5. it is ſaid, that the advice of the Lords Spiritual being preſent, and of the Procurators of them that were abſent was demanded. This making of others then Barons of Parliament Proxies, is not without Preſident likewiſe in the caſe of Temporal Lords. *Lit. Procurator. Parl.* 4 *H.* 5. *Thomas de la War* gave his Procuratory Letters to *John Frank* and *Richard Hulme* Clerks. So that it appears, that by the Law of Parliament the Proxies of the Biſhops in the 21th. of *R.* 2. were legal Proxies; and conſequently the Biſhops there virtually. Beſides that, the lawfulneſs thereof doth appear, for that it was required of them by the Parliament, that they ſhould make their Proxies, and be preſent by their Procurators, for this reaſon, leſt otherwiſe the Proceedings in that Parliament ſhould be void.

CHAP.

CHAP. X.

IT is true that the Parliament 21 *R.* 2. was wholly repealed by 1 *H.* 4. but that was for good reaſon indeed, becauſe that Parliament of 21 *R.* 2. had delegated their whole power to a few of their number, who finally without any reſort back to the Houſe made and paſt Laws.

But did ever any man before the *Octavo* argue at this rate, that becauſe there is one error in a caſe for which the Judgment is reverſed, that therefore there was nothing in the caſe legal and well conſidered. And therefore how unreaſonable and falſe this way of arguing is, and that it is diſputing againſt fact, we ſhall further ſhew and prove.

For a probable Opinion ſtill continued of the neceſſity of the Biſhops ſitting, which implies a clear Recognition of a Right; for in the 2 *H.* 5. the Earl of *Salisbury* petitioned the Houſe to reverſe a Judgment given againſt the Earl his Father, *Anno* 2 *H.* 4. the Error aſſigned was the Abſence of the Spiritual Lords. The Caſe was much debated, but the Judgment affirmed as we allow it ought to be, but we produce it as an irrefragable Teſtimony of the Biſhops Right to ſit: for if that had not been allowed, there could not have been the leaſt colour in the caſe, nor matter of debate.

CHAP.

CHAP. XI.

BUt tho' the Actual Exerciſe of the Biſhops Right in their own Perſons (though whatſoever is done by a Deputy, is done in the Right of him that makes the Deputation, as every body knows) was for ſome time diſcontinued (tho' their Right in that time was moſt ſolemnly owned and recognized) yet in 28 *H.* 6. we find them re-continuing the Exerciſe of that Right and Authority, and in their own Perſons ſitting in Judgment, upon *William de la Pool*, Duke of *Suffolk*, who was impeach'd of Treaſon by the Commons, for that he had ſold the Realm to the *French* King, and had fortified *Wallingford* Caſtle for a place of Refuge. The Impeachment of High Treaſon was brought from the Houſe of Commons, by ſeveral Lords Spiritual and Temporal, ſent thither by the King's Command; the Ninth of *March*, the Duke was brought from the *Tower*, into the Preſence of the King, the Lords Spiritual and Temporal: The Impeachment was read unto him. The Thirteenth of *March*, he was ſent for, to come before the King, the Lords Spiritual and Temporal, to anſwer to his Charge, which he did. On *Tueſday*, the Seventeenth of *March*, the King ſent for all the Lords Spiritual

ritual and Temporal, who were in Town; They are named, two Arch-Biſhops, and thirteen Biſhops, beſides the Temporal Lords, who being aſſembled, the King ſent for the Duke. There was no Judgment given by the Parliament, but he ſubmitted to the King, and the King gave him Penance; which was, that he ſhould be abſent for Five Years out of *England*.

The Lords Spiritual and Temporal, by Viſcount *Beaumont*, declared to the King, that this that was ſo decreed, and done againſt the Perſon of the Duke, proceeded not by their Advice and Council, with this Proteſtation, that it ſhould not be, nor turn in Prejudice, nor Derogation of them, their Heirs, ne, of their Succeſſors in time coming; but that they may have and enjoy their Liberty and Freedom, as largely as ever their Anceſtors, or Predeceſſors had and enjoyed before this time. Obſerve here, that the Lords Spiritual were preſent at every Motion of this Cauſe. This Cauſe was thrice before them, no exception taken to the Biſhops being Judges. They could not ſit by Permiſſion, without Right; if the Biſhops had no Right to ſit, the Proceedings had been certainly erroneous: For though one Judge's Abſence (if there be a *Quorum*) will not vacate a Judgment; yet if one ſit in Judgment, that is not an Authorized Judge, the Proceeding is certainly erroneous and void. Can any man believe,

lieve, that the Government ſhould loſe it ſelf? forget its own Eſtabliſhments in the higheſt concerns? We may as ſoon believe that a man may forget his own name. One poſitive Act of Seſſion ſignifies more than 100 Omiſſions; for if it had not been well underſtood, that the Biſhops had a Right to ſit in Judgment in Capital Cauſes in Parliament, they could never have been admitted; they would never have preſumed to endeavour it. But with falſe Logick and abſurd Reaſonings, and diſlike to the Order, it is become an Opinion in this Age, becauſe ſometimes the Biſhops abſented, that they have no Right.

But we have one thing further to add, that declares an inherent Right in the Lords Spiritual to the Authority in queſtion; and that is an Opinion of the Judges 10 *E.* 4. 35. which ſays, that the Lords Spiritual in caſe of a Tryal of a Temporal Peer in Parliament ſhall make a Procurator; for then it ſeems an Opinion was received, (which was *error temporis*) That it was indecent for Biſhops to ſit in their own perſons in Judgment in ſuch caſes. But they themſelves are beſt Judges of what is indecent and unbecoming their Order; for no man is obliged to any man but himſelf, in the matters of Decency, and the meaſures that make things decent or indecent are very mutable, as changable and mutable as Cuſtoms, Faſhions, and Opinions. Beſides that, there is nothing that is very valuable, and is of great

great concernment, but can and ought to ſet aſide and ſuperſede the conſideration of Decency.

CHAP. XII.

BUt to complete our Evidence, I will add the conſideration of what remains unqueſtionably of the Right of the Lords Spiritual, which ſeems to me to be in parity of Reaſon with the Right now in Pretence, and that is their Right to be authoritatively preſent and aſſiſting at paſſing Bills of Attainder, which the Biſhops always exerciſed as the *Folio* ſaith, though he will not think it allowable from thence to infer, that they have rightful Authority when that Houſe doth proceed judicially to Condemnation. But I deſire to be informed what difference there is between condemning a man by Act of Parliament, and by Judgment in Parliament. If the death of the man be onely conſidered, it is as much againſt the Canon to condemn the man one way or the other. It's *cauſa & judicium ſanguinis*, and death follows. Nay, to condemn a man by Bill of Attainder is more againſt the reaſon of the Canon, than the condemning a man judicially; for the condemning a man judicially is *ex officio Judicis*, but a Bill of Attainder is an extraordinary uſe of the Legiſlative

Power to a purpoſe, which was not deſigned in its Inſtitution. Such an Act is not *ex officio Legiſlatoris*, but the uſing of the Abſolute Power of the Sovereignty upon Reaſons of State. Here one would think if the Canon had any conſideration, any obligation, it ſhould reſtrain the Biſhops from meddling in ſuch Legiſlations. *Privilegia ne irroganto* was one of the Laws of the twelve Tables.

But (if I do rightly underſtand) the reaſon why Biſhops did more frequently, and without pretence of ſcruple or objecting the Canon, aſſiſt in the Bills of Attainder, was for this reaſon, That the weightineſs of the Affair, the high nature of the Proceeding, the extraordinary uſe of the Legiſlative Power, which can be warranted onely by extraordinary Reaſons, required their Preſence, and put that little pretence of the Canon out of countenance, it could not with any faith to the Government be then ſo much as mentioned for an Excuſe by the Biſhops.

And this I will ſay, that the Canon hath no more right of reſtraining the Biſhops in Judicial Proceedings, than in the Proceedings upon Bill of Attainder. That it hath not done ſo is confeſſed in this, and therefore it did not *de jure* do ſo in the other.

The *Folio* Author hath found out a very extraordinary Reaſon why Biſhops are neceſſary to Acts of Attainder, (but this he ſaith muſt not be

be drawn into an Argument for the Biſhops Right of Judging) and that is, becauſe Rights, Titles, and Intereſts, are made forfeit by Acts of Attainder, which were not forfeitable at Common Law; and for the doing of this it is neceſſary there ſhould be a concurrence of the three Eſtates to bind all Rights. This Argument ſuppoſeth, that private Acts of Attainder did not always conform themſelves in the matter of Forfeitures to the ſeverity of the Common Law, or general Statute Law: which is a miſtake; for before the Statutes of 26 *H.*8. *c.*13. & 33 *H.*8. *c.*20. private Acts of Attainder made no Forfeitures, but what the Common Law made; and ſince the Statutes of 26 *H.*8. *c.*13. & 33 *H.*8. *c.*20. the private Attainders by Parliament have not exceeded thoſe appointed by that Statute, but have often times gone leſs. And therefore the Biſhops were not preſent for the reaſon of making Forfeitures larger, and of more things than the Law at the time being made forfeitable, but of common duty, eſpecially in all theſe matters of an extraordinary nature or difficulty, to aſſiſt as Judges and Councellours in that Houſe. And to this that I now ſay, all the Acts of Parliament of private Attainders that I have ſeen, and they are not a few, are agreeable. I believe what he hath ſaid in this matter is not grounded upon any obſervation, but he was willing to find out a Reaſon for what he had undertaken to prove, and to offer it without try-

ing of its truth. Besides, whatever can be a Law, can be a Law without them, and if they are absent.

CHAP. XIII.

BUt I must take notice that we have proved beyond what is necessary, to maintain the Lords Spiritual their pretence of Right to judge of the Earl of *Danby*'s Pardon, which is the present case, and gives the occasion of this Dispute. And here I desire the Reader to remember and observe, what was heretofore done by the Bishops in case of Heresie. The Bishop in his Consistory convicted a Heretick, and did never imagine he incurr'd the Canon pretended, (though the delivery over to the Secular Arm, and burning of the Convict if he did not recant, was intended assuredly to follow) because he did not award the Execution, and give the final killing Sentence.

How then can the Canon (if it was a Law as it is not, nor obligeth any man but he that will be obliged) lay any restraint upon the Bishops in judging of the Earl of *Danby*'s Pardon. For if they disallow his Pardon, and reject his Plea, he is not to be therefore condemned, (though perhaps his Condemnation may follow, as burning doth the Conviction of a Heretick;) but he is not

not *ipso facto*, and merely by rejecting his Plea of Pardon, condemned. For obſerve, I pray, no man is condemned, or caſt in any Suit, becauſe he doth not make a good Defence, but upon the ſufficiency of the matter whereupon he is charged. Beſides, that it is not without Precedent, that a man hath been tried after a Pardon pleaded and diſallowed. This every Lawyer knows to be ſo, that if a Plea is pleaded to any Declaration, upon which the Plaintiff demurs, if the Plea be ruled a bad Plea, the Defendant hath liberty to take exception to the inſufficiency of the Declaration. So that Judgment is finally and truly given upon the Declaration and Charge, becauſe there is a good cauſe of Action, and not becauſe the Defendant hath made a bad Plea.

So that the Biſhops may judge in their own perſons of the validity of Pardons, without being contravenient to the Reaſon of the Canon ſo much talked of is evident; for that the Judgment upon the Pardon is not the final and killing Judgment. The *Folio* hath furniſhed us with an Authority for the ſame, out of an ancient Manuſcript Chronicle *in libro Mailroſſo* he calls it, wherein he ſaith, the Prelates are ſaid to have given their Opinion in 21 *R.* 2. for the revocation of certain Pardons of the Duke of *Glouceſter*, Earls of *Arundel* and *Warwick*, which were granted in 11 *R.* 2. and in the Parliament of 21 *R.* 2. repealed. And though

the Chronicle ſaid, ſome blamed the Biſhops, and thought that they had incurred thereby Irregularity. That doth not at all prejudice our Right, nor abate the force of the Teſtimony, that this matter of fact gives to it.

We reſerved it to this place to add, that as the intention of the Aſſize of *Clarendon* was, to ſet bounds to the Encroachment of the Papal Power, and in this matter to declare, how far the Biſhops might if they pleaſed obſerve the Canon Law, or rather themſelves, and what was thought then decent to their Order. So according to the Print in *Gervaſius*, and therein he differs from *Matth. Paris*) it is, *Quouſque judicio perveniatur ad mutilationem membrorum vel mortem*; which further clears the meaning of that Law to be, that the Biſhops were thereby excuſed not altogether from Capital Cauſes, but onely when it was proceeded ſo far in ſuch like Cauſe, that Judgment was to be pronounced, which when the Biſhops had nothing to gainſay, they might depart, and leave Sentence to be pronounced by the Houſe.

But we cannot after all this allow the Author of the *Folio*, to have ſo little ſenſe, as with a good conſcience to ſay, that he who cannot perhaps by reaſon of his circumſtance, and ſome conſideration of Indecency, execute a thing in his own perſon, therefore cannot do it by another, *no more than he can authoriſe one man to murther another.* Thus he ſaith *fol.* 20. when ſurely this

this Gentleman cannot think it as fit for a Judge to be a Hang-man, as to ſign a Kalendar for the Execution of the Condemned Priſoners.

But the *Octavo* is ſomewhat ſurprizing in this matter: For he doth affirm, That it is not lawful for Biſhops to vote in any Queſtion preliminary and preparatory to the Sentence of Condemnation, when ſuch Sentence follows, and the matter preliminary is neceſſary to the Proceſs. This he proves by a *Logick* Rule, *Cauſa Cauſæ, eſt Cauſa Cauſati*; one of *Sthalius* his Axioms hath turn'd round the Head of this Gentleman. I find few men can bear Axioms, Maxims, and Sentences. There are none ſpeak ſo much unnatural Non-ſence, as they that uſe them moſt. May not ſeveral men, I pray, do ſeveral parts of an affair; and yet he that doth the firſt part, is no ways the Cauſe of what another man doth in the ſecond and third place? Is the acting the firſt part of the Play, the cauſe of acting the laſt; Or, is the laying the Foundation, the Cauſe that lays on the Roof? Is the Jury the Cauſe of any more than their Verdict? And doth not the Court give Judgment by their own Authority and Cauſality?

If men would ſpeak by Nature, and according to firſt Notions, and were not ſo full of ſecond Notions, and Univerſals, we ſhould not have ſo many Errors, Miſtakes, and Confounding Opinions in the World.

But this we complain of as too ſevere in the *Octavo*; that when he had confounded us with his *Cauſa Cauſæ, & Cauſati*, he would render us ridiculous with a Story of a Friar, out of *Chaucer*,

That would of a Capon, the Liver, of a Pig the Head;
But would, that nothing for him ſhould be dead.

This indeed was a fine piece of Wit in the Poet; but tranſlated hither by our Author, is an inſipid piece of Malice. His Deſign ſure in this, was to enter the Biſhops amongſt *Chaucer*'s Friars; and then the Learned Readers of *Chaucer*, (as he wiſely imagined) would be very conceited upon them; and apply all his pleaſant Satyrs, againſt the Friars, to the Biſhops.

But for the farther Evidence of the Biſhops Baronage, and their *Jus paritatis*, it would not be impertinent here, to add, That the Names of *Barons*, *Peers*, *Seniors*, *Grants*, have been attributed to the Lords Spiritual, in all times, in Authentick Hiſtories and Records. Foraſmuch as a Nominal Argument, is not a very inartificial Topick in ſuch a Cauſe as this. Beſides, that this will deſtroy the very ſtrength of our Adverſaries; which lies in this, that they will not allow Prelates to be comprehended in the Name of *Peers*, *Grants*, and *Barons*. And that where the Records doth not expreſly mention Prelates, they will conclude, they were not meant or intended to be preſent:

But

But the Collection which was made for this purpoſe, ſhall not trouble the Reader, becauſe in two Books ſince Printed, in Defence of the Biſhops Right in queſtion, this is abundantly performed. Beſides, that it is a very precarious Concluſion, that our Adverſaries make, and without argument: For they ground themſelves herein, upon a moſt unreaſonable *Poſtulatum*, *viz.* That Titles do not belong to perſons for whom they were made, and to whoſe Character they agree; and that Words do not deſign the things which they were made and impoſed to ſignifie.

CHAP. XIV.

NOw we ſhall proceed to perform a neceſſary piece of Juſtice to the Prelates, as well as a Right to the Government, to recover its true Conſtitution, from the Prejudice of Modern Ignorance, to declare and manifeſt, that our Government doth conſiſt of three States, the Lords Spiritual, and Temporal, and Commons of *England*.

Theſe do make the Great Council of the Kingdom, and miniſter to the King, Council and Auxiliaries; over which the King doth preſide as the Great Superintendent, and Mover of this mighty *Machin*.

The

The conſequence of which is, that the Biſhops cannot be detruded from that place they bear in the Conſtitution of the Government, for that no Government can be legally or by any lawful Power changed, but muſt remain for ever once eſtabliſhed. And it can be no leſs than Treaſon of State to attempt a change, no Authority in the world is competent to make any alteration.

The Princes of Chriſtendom, after they took to themſelves the Election of Biſhops, which is a natural right of the Sovereign Power become Chriſtian, they ſoon obſerved the advantage that they might make by advancing them to the greateſt Secular Dignities, Governments, and Truſts; and did accordingly advance them to an equality, if not to a ſuperiority, to the higheſt of the Secular Nobility; gave them Dutchies, Marquiſates, Baronies, and rich Endowments, and erected that Order into a ſucceſſive Nobility: Another ſort of Nobility from that of the Lay Princes; concluding that they ſhould be better ſerved by men of their own choice and approved worthineſs, (who had alſo other advantages over the People, than thoſe that the Temporal Princes and Lords had, by that Reverence they paid to their Biſhops, and the Authority and Power that they had over them in the virtue of Religion) than by the Hereditary Princes and Nobility, who did not always anſwer to the virtue of the original Anceſtors, and the firſt ſtock. Be-

Beſides that, Religious Kings and Sovereign Princes did by advancing Biſhops intend to do great advantages and honour to Religion.

But withal they did not divide the Biſhops thus advanced, from the Secular Princes and Noblemen in Councils, for then they had loſt their deſign. The Biſhops could not have had any direct influence upon the Councils of the Nobles and Secular Princes, nor have tempered their Debates with an excellent Charity and firm Loyalty, and other Virtues which belong to their Character. It would have made trouble, diſtraction, and impediment in the Affairs of Princes, emulation and ſtrife and faction between the Eccleſiaſtical and Secular Orders and ſeveral other miſchiefs and great inconveniencies would have enſued, if they had been divided and ſeparated in ſeveral Colleges, and had had in conſequence thereof a Negative upon each other, as they then of neceſſity muſt. But by uniting both Orders into one Council and Aſſembly, diſtractions in Councils and impediments to the Affairs of Princes are avoided. And we are aſſured of a more wiſe, as well as an unanimous and more authoritative Reſult in all Councils and Debates; which if the *Octavo* had duly conſidered, he would not have depraved and diſparaged this wiſe Conſtitution, by comparing it to a neſt of Boxes.

They were therefore, for theſe great Reaſons, both Spiritual and Secular Lords united in the great

great Councils of Kingdoms, and these two Orders of Nobles Spiritual and Secular, became the two States, which together with the Representatives of the People the third State, made the Parliaments and the Diets and Conventions of State, under which Names the great Assembly which we call a Parliament, in the several Sovereignties of Christian *Europe* hath respectively passed.

This hath been observed by the most learned *Onuphrius: Postquam verò juris imperii facta est eorundem Prælat. electio, quemadmodum & ceteri Principes seculares Imperii, tum Cæsares qui de Religione bene merere volebant, sine Imperii tamen præjudicio cœperunt Episc. & Abbates, ob Religionem tanquam potiora Imperii membra, præ cæteris Laicis Principibus honorare, profana ditione & ingentibus opibus honestare, Arces, Oppida, Urbes, Marchias, Ducatus, Provincias, Pedagia, Telonia, Vectigalia, Portaria, & multa alia quæ Imperii propria erant, Episcopatibus concedere, quæ vel ex suis propriis bonis quæ ad Imperium pertinebant, vel ex alienis feudis erant. Nam Laicis Principibus sine legitimo hærede mortuis, eorum Provincias, quæ beneficiario jure ad Imperium pertinebant, non aliis amplius Laicis Regulis, sed Episcopis concedebat; atque hac ratione omnes Episcopatus & Abbatias Italiæ, Galliarum, & Germaniæ, imò totius Orbis Latini, & denique ipsum Pontificem Romanum, ex pauperibus ditissimos, maximos Principes fecerunt, & ex eis scilicet opibus, quæ antea Imperii juris erant, in nulla re propterea Imperialia jura minui existimantes; quippe*

quippe quod certi eſſent eos omnes Prælatos a ſe deſignandos fore, & non niſi juſſu ſuo, & voluntate Sacerdotia ipſa obtenturos.

Nicholaus Cuſanus, *lib. 3. de Concordia Catholica, cap. 27.* attributes this Policy to *Otho Secundus*, who ſaith he, *Unico gaudens filio & multis regnis, cogitans difficile fore abſque maximo labore, tot regna in pace aliquamdiu ſervari poſſe, inſequens veſtigia Avi ſui* Henrici *Primi*, & Ottonis *Patris, ſuum cogitatum ad res eccleſiaſticas appulit, conſiderans multa jam Religioſis locis per præſentes Reges donata, ſumma pace gaudere, quia verecundum erat Deo dicatis vim inferre animo ponderavit Ordinationem factam Synodo* Romanæ *Eccleſiæ, de qua 63. Diſt. In Synodo. Per quam perpetua dabatur poteſtas Imperatoribus, & Romanum Pontificem, & Cunctos ſub Imperio Epiſcopos inveſtiendi, vel ſaltem eorum conſenſum ſemper concurrere debere celebrata Canonica Electione, ut 63. Diſtinct. NOS SANCTORUM. Unde hoc ponderans credidit, perpetuis temporibus Imperio ſubjectis pacem dare poſſe, ſi temporalia Dominia, tam* Romanæ *Eccleſiæ, quam aliis adjungerentur, cum certi Servitii obſervatione, tunc enim cultus Divinus augmentaretur, & Religionem in magnam Reverentiam exaltandam credidit quando ſanctiſſimi magnæ potentiæ aliis Principibus intermiſcerentur: non poſſe tunc quoſque voluntate in peccatis uti. Nulla publica ſperabat unquam peccata Captorum & depopulatorum agrorum, & communem pacem turbantium, incendiariorum;*

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& consimilium posse nutriri Ecclesiastica Sacra potestate potenti & valenti resistente: etiam prædones & pauperum oppressores, qui particulari regimini præessent, sic corrigi posse affirmabat, ut sic absque Tyrannica Oppressione populus in Libertate vivere posset. Imperio etiam tranquillissimo non dubitabat hanc Ordinationem esse utilissimam, quando per annua servitia, & præstimonias cuilibet Ecclesiæ juxta quantitatem temporalium indictas Status Imperialis manu-teneretur, ac etiam multo major Imperii Potentia ex hoc appareret, quod illis omnibus Dominiis ita Ecclesiis traditis, nullus, nisi per Imperium & absque Successione, percipi posset. Who is desirous of more to this purpose, may see *Sigonius, de Regno Italiæ.*

Bishops were made Dukes and Counts in *France*, and also Peers in *France*; and about this time, out of the Princes, Dukes and Counts, the number of 12 were selected by the Kings of *France*, and erected into the Title of the 12 Peers of *France*: by which Dignity, they became the Chief Councellors, and Directors of State. These twelve being chosen, besides their being Peers in matters of Judgment, in the Old Parliaments, were Peers also in the management of the whole Kingdom; and while their Greatness held, were therein so Powerful, that they added a Taste of *Aristocracy* to that great Monarchy not disagreable to the Title that our Peers assumed of being *Pares Regis*, and having a Power, *Frænum apponere Regi ne sit infrænata*

frænata Regis potentia & trahatur ad injuriam, Bracton, *f.* 107. but he and his Law both are antiquated.) Of theſe, ſix were Lay, and ſix were Eccleſiaſtical; but the Dignity of *Pair*, is ſuppoſed in theſe Biſhops, not as they are Biſhops; but as being Dukes and Counts alſo; that is, in the firſt three, *viz. Rhemes*, *Laon*, *Langres*, as Dukes, and of *Beavois*, *Chalous*, and *Noyons*, as Counts.

Theſe twelve Peers of *France* had ſuch a Power towards the Ancient Kings of *France*, as the *Ephori* of *Sparta*, and the *Juſticiaries* of *Arragon* had towards their Kings. They were obliged to exerciſe that Power with Care, and they did exert it towards their Kings. What they did agreable to the Power aſſigned them in the Government, was lawful and juſt; nay, their bounden Duty. But certainly, the Exerciſe of theſe Powers was againſt no Command of God: For God makes no Government; nor obligeth us to obey any, but what are made by Men: The Government it ſelf is its own Meaſure. It's no Objection againſt the Lawfulneſs of any Government, that it's inconvenient, if they like it, notwithſtanding, whoſe Government it is. But this Conſtitution was of advantage to Royal Families, in that it made a kind of Entail of the Crown upon their Families, and preſerved the Monarchy and its Deſcent: And beſides, had this farther Conveniency, that it was under them impoſſible for a Nation, or Kingdom to be undone in a

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trice for a Caprice of the Prince, or deſtroyed to make a Fortune for ſome Up-ſtarts.

For the Sake of Mankind, it is to be earneſtly deſired and prayed, that ſuch as they who derive no Honour from their Anceſtors, may leave none to their Children, that themſelves may ſurvive their Honors, and leave nothing of their Fortunes to their Children, but what they themſelves could deſerve, *viz.* Hate and Infamy. All Uſurpation and Encroachment of Power is to be oppoſed where it can be lawfully, as the greateſt Miſchief, and the Miniſters to the Deſigns hated and deteſted as the moſt pernicious and loathſome Vermine.

CHAP. XV.

BUt to return, agreable to this Policy of Sovereign Princes, who had the Donation of Biſhopricks, of advancing Biſhops to the higheſt ſecular Dignities and Truſt.

William the *Conqueror* did create Biſhops into Barons, and exacted the Services and Counſels of Barons in the Great Council of the Kingdom, by putting their Lands under Tenure by Barony: he gave them no new Endowments; but as a Conqueror, he confirmed their Ancient Poſſeſſions, under a new reſerv'd Tenure, and annex'd to their Order, a Secular Honor,

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a ſucceſſive Baronage. Since the Conquerour the Title of Baron took the place of that of *Thane*, which was likewiſe a Feudal Honour in the *Saxons* time. By *William the Conquerour* Baronies were feudal, and in congruity to the State of the Lay Nobles he made the Biſhops feudal Barons, for there was no other than feudal Nobility at that time.

It will not be amiſs, nor time miſpent, here to give a ſhort account of the Government in the Conquerours time, of the Baronage by him introduced, and the Policy thereof, and of the change made in the Baronage of *England* in after-time. Becauſe from thence we muſt derive the Biſhops Right now in queſtion, which is included and virtually contained in their Right of Baronage. Hereby it will appear, that the Biſhops were of the *Barones majores*, and of the *Barones majores* the firſt in Dignity, that they became feudal Barons in the Conquerour's time; and when the reaſon of our Baronage changed, and no man continued a Baron *ratione tenuræ*, it cannot with reaſon be ſaid, that the Biſhops are Barons only for the ſake of their Lands, which our Adverſaries do inſiſt upon, for that they think it is an abatement to their Honour of Peerage, and a prejudice to their Right in queſtion.

But becauſe it has been ſaid before by men of Authority in the Law, and grown up to be a vulgar error, we will now diſcharge the miſtake, by affixing here the Hiſtory and Reaſon of the change.

It was the Policy of the first *William* (for ſome are ſo critical they will not call him *Conquerour*) to create new Tenures upon all the great Poſſeſſions of the Realm, and impoſe upon the principal men to hold their Lands of him *in capite*, under ſuch Services that were neceſſary in Peace and War for State and Juſtice, and by putting all the conſiderable men of the Realm under Oaths of Fealty incident to thoſe Tenures, beſides the Oaths of Allegiance, he provided for the eſtabliſhment of his Conqueſt, or his poſſeſſion of the Crown without Title. The principal men of the Realm, both Eccleſiaſtical and Lay, hereby were not only obliged to ſupport, but to become part of the Government, and were obliged to be Miniſters of Juſtice, and alſo Members of the great Councell of the Kingdom or Parliament, which was now to be made up principally of his Dependents; by which he changed the conſtitution of the great Council in the *Saxons* times, and the balance of that equal ſort of Government; the conſequent miſchiefs whereof this Kingdom laboured under, until we recovered it again by an equal repreſentative of the Commons in Parliament, in the time of King *Henry* the Third. The power of the Baronage at that time to be reduced, proved equally oppreſſive to the People, and irreverent to the Crown. By this Policy the Conquerour intended to eſtabliſh his Conqueſt, to ſecure to himſelf, and his Poſterity the Imperial Crown

of

of *England*, imagining, that otherwiſe he ſhould have been but a precarious King.

He had now turn'd the Kingdom upon the matter, into one great Mannor, and kept his Courts, called, the *Curia Regis*, in the nature of a Sovereign Court Baron; now become more frequented and ſolemn, than that Court was before the Conqueſt, thrice in every Year, at ſtated Times, and Places, *viz.* at *Eaſter*, at *Wincheſter*; at *Whitſuntide*, at *Weſtminſter*, and at *Chriſtmas*, at *Glouceſter*: at theſe times and places, all his Tenants, which were all the conſiderable Free-holders of *England*, attended of courſe; and upon a General Summons at any other time or place appointed by the King, as his Affairs did require, they were bound likewiſe to attend.

In theſe Courts the Suitors ſwore Fealty, did renew and confirm their Obligations to the Crown, and the King became more aſſured of their Allegiance, by their Perſonal Attendance, and by his Royal Entertainments of them at ſuch times.

In theſe Courts they recognized their own Services, and the Rights of the King, their Lord, and aſſeſſed Aids and Eſcuage upon themſelves, Preſtations due to the Crown, to which in general they were obliged by their Tenures. In theſe Conventions the Right of the Suitors, the King's Tenants were adjudged, as Private Lords had Judgment of the Right of Lands,

in pretence held of them in Fee, in their ſeveral Manors, as they have to this day. But if Right was not done by the Lord, the Cauſe was to be removed to this *Curia Regis*, the King being Lord Paramount, of whom all Eſtates, mediately, or immediately were held: Which appears by the Form of the Writ of Right now in uſe, which we will tranſcribe, N. B. *præcipimus tibi quod ſine dilatione plenum Rectum tenas* A. *de* B. *de uno Meſſuagio* L. *in* I, *quæ clamat tenere de te per liberum Servitium unius denarii per annum pro omni ſervitio, quod* W. *de* T. *ei deforciat; & niſi feceris Vicecomes faciatne amplius inde Clamorem audiamus pro defectu Recti.* The Common Pleas was not then a Court, and at this time the Appeal and reſort to the King, was in this Court, if Juſtice was not done by the Lord or Sheriff. So that the greateſt part of the Juſtice of the Nation was adminiſtred in thoſe Aſſemblies.

But it muſt not be underſtood, that this vaſt Convention was a Court of Judicature for every Cauſe; neither, that it was formally a Parliament, without ſome farther Act of the King for erecting that Convention into the great Council of the Nation.

But in this *Curia Regis*, they were obliged to anſwer the King's Writs of Summons, Writs of Commiſſion, and obey his Appointments in the Ordinary Adminiſtration of Juſtice, in which the *Capitalis Juſticiarius*, or *Juſtitia* was to preſide. That

That this was not a Judicature, the vaſt numbers of thoſe that made it, the inequality of the Perſons conſidered under the Common Reaſon of being Tenants in *Capite*, and Barons, whereby they became indifferently members of the *Curia Regis*, beſides the neglect that muſt neceſſarily be preſumed in the greateſt part of ſuch a Body, to the buſineſs of Juriſdiction and judging of Rights, without particular Deſignation thereto, do ſufficiently argue and evince. But as many of them as were moſt proper to judge, or aſſiſt in the Judgment, as the Caſe did require, were appointed by the King, or his *Capitalis Juſticiarius*. And that it was ſo in Fact, appears by that Famous Cauſe, wherein Arch-biſhop *Lanfranck*, recovered againſt *Odo*, Biſhop of *Baieux*, Earl of *Kent*. *Eadmerus Hiſt. Nov. l.* 1. *f.*9. tells us, That there was *Principum Conventus*, an Aſſembly of Barons at *Pinneden* in *Kent*; and that the Kings Precept was, *Rex quatenus adunatis primoribus & probis viris, non ſolum de Comitatu* Cantiæ, *ſed de aliis Comitatibus* Angliæ, *Querelæ* Lanfranci *in medium ducerentur, examinarentur, & determinarentur*; *diſpoſito itaque* (ſaith he) *principum Conventu apud* Pinneden, Gaufridus *Epiſcopus* Conſtantienſis, *vir ea tempeſtate prædives in* Anglia *Vice Regis* (for *Odo*, Biſhop of *Baieux*, one of the Litigants, was at that time the *Juſticiarius Angliæ*) *juſtitiam de ſuis querelis ſtrenuiſſimè, juſſus, fecit*; where we ſee *Godfrey*, at the King's Precept, took ſo many Barons of

that Country, or of any other, where any of the Lands lay, as Aſſiſtants to him: For our Hiſtorian ſaith, that *Lanfranck*, (though *Godfred* pronounced the Judgment) did recover *judicio Baronum qui placita tenuerunt*. The *probi homines* were ſuch, by whom the truth of the matter might be better underſtood, and did probably enquire of it, who did accord and agree the Judgment to be right. *Lanfranck* did recover *ex communi omnium aſtipulatione & judicio*, as our Hiſtorian alſo informs us. I might cite many more Records of the Method of the Adminiſtration of Juſtice in this *Curia Regis*; but I ſhould be too long in this matter, not being ſtrictly neceſſary to the Queſtion in hand, though the underſtanding of the Nature of this Court, and the Conſtitution of the Government at this time, will many ways inſerve to the clearing the Right thereof.

CHAP. XVI.

Court of *Common-Pleas.*

IN this Court Peers were Tryed, all Pleas of the Crown heard; and whatever is now the Buſineſs of the Courts of Common Pleas and Exchequer, was diſpatch'd in this *Curia Regis*. Here Fines were levyed, as appears by a Record furniſhed to us, by Sir *Hen. Spelman*, in his *Gloſſ. f.* 279. the word *Fines*. There

There men famous for their Skill in the Law, did attend, and by this Judicature, ſome place was aſſigned them, where they were to hear ſuch Cauſes as were referred and ſent down to them.

It is very poſſible that before them Fines may be levyed, *i. e.* Concord made of the thing in pretence, that was referred to them; and it may be true, that in a Charter of a Grant of *Conuſance* of Cauſes, Words may be contained for excluding the Intromiſſions of the Juſtices of the one Bench, and the other: For ſuch Charters never want words. Theſe matters are produced by Sir *Edward Coke*, in his Preface to the Eighth Report, to prove that the Common Pleas was a Court before the *Magna Charta* of King *John*; for that theſe matters are in time before that Charter; but theſe Juſtices were no other than Miniſters to the *Curia Regis* or *pedanes judices*: They were not ſuch Juſtices as now make that Court, all Common Pleas being now appropriated to their Judicature: For the Writs, before that Charter, were returnable, *coram me, vel Juſtitia mea*, *Glanvil. l.* 1. *cap.* 6. But after that Charter, they were returnable, *coram Juſticiariis meis apud Weſtmonaſterium. Bracton. l.* 2. *cap.* 32. Before that, all Common Pleas were adjudged in the *Curia Regis*, and that Court did ſend down the Cauſe to ſuch as did attend that Court to receive its References. By *Magna Charta*, *cap.* 11. it was provided, *Communia placita non*

ſequantur Curiam noſtram, ſed teneantur in aliquo certo loco. And now Writs were made returnable there, the Common Pleas were taken out of the Juriſdiction of the *Curia Regis*, one Judicature was appointed for all Cauſes between the Subjects and the ſame ordinary Judges, and one place of Attendance for Litigants. By this Proviſion, Juſtice was adminiſtred without Noiſe and Tumult; the Adminiſtration of it committed to men of Skill; and to ſuch who might be anſwerable for their Judgments, and from whom it might be appealed.

But after *Magna Charta*, made by King *John*, and confirmed 9 *H.* 3. the Authority continued of the *Juſtitia*, or *Capitalis Juſticiarius*: to him was the reſort for Writs, from whence all Judicial Authority was ſtill derived: He did direct and bound the Juſtice of the Court of Common Pleas, by ſuch *Formula's* as were allowed in the *Curia Regis*, where the Chancellor, and his Colledge of Clerks did attend for the forming of Writs, according to the nature of the Complaint, with the allowance of that Court; but the Authority of this Court ceaſing, and the Office of this great Juſticiary, about the end of *H.* 3. we find in the Statutes of *Glouc.* 6 *E.* 1. *c.* 7. a Law for a Writ of Entry to be granted to the Reverſioner, where Tenant in Dower, Aliens in Fee, though her Alienation was a Forfeiture of that Eſtate at Common Law: But it ſeems there had been no ſuch Writ

Writ yet formed; and the Chancellor had no ſuch Power of forming a new Writ. That Statute provides, that in that Caſe, there ſhall be a Writ of Entry thereof made in Chancery, which is called, A Writ of Entry *in caſu proviſo.*

And for that Power might not be wanting in the Chancellour to iſſue out new Writs where no Writs before formed were fitted to the Caſe. So that Writs in Caſes of like reaſon had been granted; by *W.* 2. *cap.* 24. it was provided, *quotieſcunque evenerit in Cancellaria quod in uno caſu reperitur Breve, & in conſimili caſu cadente ſimili indigente remedio concordent Clerici de Cancellaria in Brevi faciendo.* Whereas in the full Authority of the Court of the *Curia Regis*, no Right could have failed of a Remedy: For *Jura ſunt matres Actionum.* But Derivative Authorities, are always *ſtricti Juris.* No Rights are now taken to be remediable, but where they are in a Parity of Reaſon, or Analogy with ſuch Rights as had received relief in the time of that Great and Original Judicature.

So inconvenient are thoſe Reformations, that reform by pulling down: Want of Authority to do Right, is a greater Fault in Government, than the allowance of a Power that may be abuſed to Wrong and Oppreſſion: But this is the true reaſon why we have ſo many Cauſes irremediable at Common Law, Petitioning for

for relief at this day in our Court of Chancery; though, if the Statute of *Weſtm.* 2. before-mentioned, were well improved, the Defects of our Law would not be ſo ſhameful and notorious.

By what hath been ſaid, it appears, that the Common Pleas was not an Original Court, or a Court of ordinary Juriſdiction in the Firſt Conſtitution of the Government; and ſuch it remains and continues to this time: For that Court cannot proceed to Judgment in any Cauſe, without an Original Writ out of Chancery, though a late Statute makes their Judgments good, without an Original upon a Verdict. If the Cauſes that are properly now of the cogniſance of that Court of Common Pleas, had been allotted to that Court Originally, when the diſtribution of the Adminiſtration of Juſtice was made in the Conſtitution of the Government, that Court, by its proper Authority, and its own Proceſs, would have done Juſtice to all its Suitors, without firſt expecting a Writ out of Chancery, to bring the Cauſe before them; or leaving any right without remedy to complain in Chancery of the defects of Juſtice in that Court, and of our Law.

Court of *Kings-Bench.*

But that Law of *Magna Charta*, *cap.* 11. before-mentioned, which erected the Court of Common Pleas, fix'd the Judges, and appropriated civil Cauſes to their Judicature, no longer now ambu-

ambulatory, was the firſt ſtep that was made to reduce the Court of Barons, called, *Curia Domini Regis*, in which the *Capitalis Juſticiarius* did preſide: Yet ſtill this Court continued a Court of Pleas of the Crown and Appeals, and for thoſe that had the Priviledge of that Court, as Officers, Dependents, Suitors, as appears by *Bracton*, *l.* 3. *cap.* 7. *Rex habet unam propriam Curiam ſicut Aulam Regiam, & Juſtitiarios Capitales, qui proprias cauſas Regias terminant & aliorum omnium per querelam,* (*i.e. Appeal*) *vel per privilegium ſeu libertatem.* This Sir *Edward Coke* imagines is meant of the Kings Bench, but that muſt be a miſtake, for *ſicut Aula Regia* is not competent to that Court as now, the *Capitales Juſtitiarii* were not the Chief Juſtices we now have. For the Office of the *Capitalis Juſtitiarius* did yet continue. But then that which follows in *Bracton*, the deſcription of the Juſtices of the Court he before ſpake of puts the matter out of doubt; *Item* (ſaith he) *Juſtitiariorum quidam ſunt capitales, generales, perpetui, & majores, à latere Regis reſidentes*; which terms are agreeable to none but the Barons.

But this ſort of Judicature was not fit for continuance, and the Barons were to be reduced, they were diſmiſt of this Juriſdiction about the time that change was made, in reference to them in the Parliament; for as long as they continued in their numbers and power ſo great as they were; both Courts and Parliaments were troubled

troubled with tumultuous heaps of People brought thither by the Barons to countenance their pretences, of which who will may see enough in *Eadmerus*. And this reducement was (I doubt not) about the end of the Reign of *H.* 3. when the first Writs were issued to chuse Knights of the Shire. *Philip Basset* was the last of these *Capitales Justitiarii*; Sir *Henry Spelmans Glossary*, *p.* 415. And then the Court of Kings Bench came to have such Judges as at this day, *ad obitum H.* 3. 1272. *Summorum Angliæ Justitiariorum authoritas cessavit, postea Capitales Justitiarii ad placita coram Rege tenenda appellati sunt*, saith an ancient Anonymous Author quoted by Sir *Hen. Spelman*, *Glossary* 406.

That ancient Style of *Capitalis Justitiarius Angliæ* is now allowed to the Chief Justice of the Kings Bench, though his legal Style is *Capitalis Justitiarius ad placita coram Rege tenenda.* 2 *E.* 1. *Radulphus Hengham* was made the first Chief Justice of the Kings Bench, as Sir *Henry Spelmans Glossary* 416. But the Chief Justices of the Common Pleas were first made about the time of King *John's Magna Charta*, when that Court was fixed, as is before remembred. Sir *Henry Spelman* out of *Florilegus* tells us, *Martin Peteshul* was Chief Justice of the Common Pleas, 1 *H.* 3.

Barons of the Exchequer.

Neither did *E.* 1. trust the Barons with the Government of his Revenue, as it was before the *Capitalis Justic.*

Justic. and the power of the Barons was reduced; but he made *Adam de Stratton* a Clerk Chief Baron, but in what time of his Reign doth not appear.

But they continued after they were reduced from the busines of the Kings Bench, and from that of the Court of Common Pleas, to have the Government of the Revenue, and making a Court of Exchequer. And they still continued the Exercise of their ancient ordinary Right, and judged Common Pleas in the Exchequer until the 28 *E.* 1. And then in the Statute called *Articuli super Cartas, cap.* 4. it was enacted, That no Common Pleas shall be henceforth held in the Exchequer, contrary to the form of the Great Charter. Their exercising their power lastly in that Court, may be the reason why the Judges of that Court are called Barons. Sir *Henry Spelman* saith, he hath an uninterrupted Succession of the Barons of the Exchequer, from the sixth year of *Edward* the Second; by which it appears, that the present Constitution was established after the Kings Bench and Common Pleas were made such Courts as they now are.

These new Judicatures were erected upon the reducement of the *Curia Regis* and the Office of the *Capitalis Justitiarius Angliæ*; and in consequence all derivative and delegated Authorities thence did agreeably cease. The want of remembring or giving heed to this hath been the occasion of a novel Opinion, That the Ancient

cient Court of the *Marſhalſea*, that had Cognizance of all Pleas of the Crown ariſing within the Verge, doth yet continue; whereas it will appear antiquated and aboliſhed by ſhortly declaring what the Authority of that Court was.

It was no other than a delegated and deputed Authority from the *Capitalis Juſtitiarius*.

For this we have the Authority of *Fleta, lib. 2. cap. 2. Habet & Rex Curiam ſuam coram Seneſchallo in Aulâ ſuâ qui jam tenet locum Capitalis Juſtitiarii Regis, de quo fit mentio in communi brevi de homine replegiando, qui proprias cauſas Regis terminare conſuevit & falſum Judicium ad veritatem revocare & conquerentibus abſque brevi Juſtitiam exhibere, cujus vices gerit in parte idem Seneſchallus Hoſpitii Regis, cujus intereſt de omnibus actionibus contra pacem intra metas hoſpitii continentes duodecim leucas in circuitu Regis ubicunque fuerit in Anglia quod quidem ſpatium dicitur Virgata Regia illatis etiam ſine Brevi non obſtante Privilegio vel libertate alicujus legem Regni expectantis: Auditis querimoniis injuriarum in Aulâ Regiâ audire & terminare.*

This Book appears to be of unqueſtionable Authority, it being a very Learned Book, and writ with judgment and accuracy.

Beſides Mr. *Selden* tells us that that Book was written by ſome eminent Judges and great Lawyers of that Age, committed to the Priſon of the *Fleet* for Bribery and Corruption, and thence the Book had its Name. Theſe great Lawyers were

were then expiating for their Corruptions, and by this Book intended to make ſome publick ſatisfactions, and to Redeem their Honour.

By this Authority it appears that the Steward of the Court of the Verge had only a delegated Authority of the *Capitalis Juſtitiarius Angliæ.*

So great an Officer and Magiſtrate it ſeems might make his Deputy. And it ſeems very congruous to the high Dignity and vaſt Truſt of this mighty Magiſtrate, when by the Statute of *Magna Charta*, *cap.* 11. this *Capitalis Juſtitiarius* had Power given him to make and appoint Juſtices of Aſſiſe. *Capitales Juſtitiarii noſtri mittent Juſtitiarios noſtros per unumquemque Comitatum ſemel in Anno qui cum militibus eorundem Comitatuum capiant in Comitatibus illis Aſſiſas predict.* Sir *Edw. Coke*, M. C. f. 26. *That they ſent theſe Juſtices of Aſſiſe by Authority under the Great Seal under their own Teſt, which none can do but the King himſelf if he be preſent, nor any Officer but he if the King were abſent.* Who was meant by this *Capitalis Juſtitiarius* in the paſſage recited out of *Fleta*, appears by what we have tranſcribed out of it (*viz.*) That the *Senechallus* was Vicegerent in part of the *Capitalis Juſtitiarius*, who is mentioned in the common Writ *de Homine Replegiando.* This Writ I find recited in *Bracton*, *Lib.* 3. *Cap.* *Rex Vicecomiti ſalutem præcipimus tibi quod juſte & ſine dilatione replegiatii facias talem quem talis ceperit & captum detinet niſi captus*

ſit

ſit per ſpeciale preceptum noſtrum vel Capitalis Juſtitiarii noſtri vel pro morte hominis, vel foreſta noſtra, vel pro aliquo alio recto quare Secundum legem Angliæ non ſit replegiandus ne amplius, &c. pro defectu Juſtitiæ, &c. Teſte, &c. Bracton, writ in the time of *H.* 3. and therefore the *Capitalis Juſtitiarius* mentioned in *Fleta*, can be no other than the great Officer before mentioned, whoſe Office as to the Juriſdiction mentioned in *Fleta*, is reduced and placed in the Kings Bench: but none of the Powers and Authorities can be by that Court delegated or transferred to any other. It appears likewiſe by *Fleta*, that the Authority of this *Seneſchallus* was ordinary, that he proceeded *ex officio* without Commiſſion or Writ *ſine Brevi*, a certain Diagnoſtick that it was the Authority of the Soveraign Judicature in which the *Capit. Juſtic.* did preſide that was exerciſed by this *Seneſchallus*.

That this *Seneſchallus* proceeded *ex officio* in all Cauſes, and had the vicarious Power of the Ancient *Capitalis Juſtitiarius* appears too by *Britton*, who wrote his Book about the beginning of *Edward* the Firſt, in the firſt Chapter. If we underſtand theſe words in him, *Nous volons que noſtre Juriſdiction ſoit ſur touts Juriſdictions in Noſtre Royalme* of the *Curia Regis*, which is very reaſonable, ſince it was held *Coram Rege*. And the Kings of *England* never was ſaid to exerciſe any Juriſdiction other than

in

in that Court, which in the ſtile of the Laws was the Kings Juriſdiction. And beſides it is fit that ſuch an obſcure and dark Writer as *Britton* ſhould be explained by that which is diſtinct and clear in *Fleta* to the ſame purpoſe.

It is not ſtrange that *Fleta*, which was written about the beginning of *Edward* the Firſt, ſhould ſpeak of the Authority of the *Capitalis Juſtitiarius* and of a vicarious Power of that great Magiſtrate exerciſed by the mentioned *Seneſchallus* as then in being: When it was not utterly aboliſhed by any poſitive Act of State (as will appear by what we ſhall ſay of the Authority of the Lord High Steward) but reduced and cantoniſed into our ſeveral great *Weſtminſter* Judicatures, as we have before ſhewed: But that Office remained at that time in the conſideration of the Law (as we ſay) and was not at the time of his Writing (to be ſure) long diſcontinued in the exerciſe thereof.

Sir *Edw. Coke*, in his 10*th*. Report, in the Caſe of the *Marſhalſea* ſaith, that *Fleta* was writ in the time of *Edward* the Firſt, before the Statute of *Articuli ſuper Chartas*, made 28 *E.* 1. for which he gives no Reaſon: but in his Preface to that Report, which one would think was writ after the Report, and therefore ſure gives us his ſecond and laſt thoughts; he ſaith, it appears that the Author of *Fleta* lived in the Reigns of *Edward* the Second, or *Edward* the Third, which he proves from theſe paſſages in the Book it ſelf,

viz. Lib. 1. *cap.* 20. *ff. Qui ceperint.* And *Lib.* 2. *cap.* 66. *ff. Item quod nullus.* Both which are the cleareſt Evidence and Proof that the Book was writ in the time of *Edward* the Firſt.

The Section, *Qui ceperint*, is thus: Amongſt the *Capitula Coronæ & Itineris* to be enquired of by the *Juſtices Itinerant*, this is mentioned as one, *Qui ceperint mandatum Regis ut ejus debita ſolverent, & à creditoribus aliquam portionem ceperint ut illis reſiduum ſolverent & nihilominus totum ſibi allocari fecerint in Scaccario vel alibi.*

Firſt, this was an offence at common Law, it being a manifeſt and publick injuſtice and oppreſſion to the Kings Servants, to the diſcouragement of Publick Services and Miniſtries to the Crown, by which the King and Common-wealth will be ill ſerved. And Secondly, in the *Stat. Weſt.* 1. made 3 *Ed.* 1 it is thus Enacted. *De ceux que pernont part des dets de le Roy, ou autres louers pernont des Creanſors le Roy, pur fair le payment des meſmes celles dets purview eſt quils rendent le double & ſoient punies grevement a la volunt le Roy.*

The other Section, *Item quod nullus*, is this; *Item quod nullus diſtringatur pro Scutagio, ſed capiatur ſicut capi conſuevit tempore* Henrici *Regis proavi Regis nunc. Henry* the Second was Great Grand-father to *Edward* the Firſt, and Grand-father to *Henry* the Third every man knows. By the *Great Charter* of *Henry* the Third,

Third, *cap.* 37. it is Enacted, *Scutagium de cætero capiatur ſicut capi conſuevit tempore* Henrici *Regis avi noſtri.*

Certain it is, whatever Authority was exerciſed by the *Seneſchallus* as Vice-gerent to the Ancient *Capitalis Juſtitiarius* by the diſcontinuance of that Office is diſcontinued, and by the long diſcontinuance of that Office antiquated and aboliſhed.

And this I think is a fair and clear account of the ceaſing of the Ancient Court of the Verge, and a very ſufficient Reaſon, for Sir *Ed. Cook*, his concluſion in his *Magna Charta fol.* 549. (*viz.*) That the Power of the Steward and Marſhal to hold Plea of all Felonies within the Verge is vaniſhed.

His Authority as Steward and Marſhal of the Court of the *Marſhalſea* of the Kings Houſhold continues. His Power as ſuch was confined to Felonies done within the circuit of the Kings Houſhold, the bounds whereof are made certain, the Judges of that Court, and the manner of their proceedings eſtabliſhed by 33 *H.* 8. *c.* 12. And he might have determined all Felonies committed within the Kings Palace before the ſaid Statute, *Stamf. pl. cor. lib.* 2. *cap.* 5.

And what Power the Steward and Marſhal ſhall have in Civil Cauſes was ſettled and limited by the Statute of *Articuli ſuper Chartas*, *cap.* 3. made 28 *E.* 1.

Powers that belong to an Office cannot be executed by Commiſſion, nor Juſtice adminiſtred by Commiſſion, where it ought to proceed by Writ, *Dyer*, *fol.* 175. No new Office can be erected, nor no Commiſſions iſſue but what are allowed by Law: The very form that the Law appoints muſt be exactly obſerved. We have had a Commiſſion quaſh'd for being in *Engliſh* when it ſhould have been in *Latin*. Sir *Ed. Cook.* 12*th. Report*, *fol.* 31.

So Sacred have we hitherto preſerved the boundaries of Power which are fixed by the Commiſſions and Authorities which the Law hath eſtabliſhed, beyond which our Kings cannot command, nor have any Right to be obeyed. That our Judges have not ſuffered the leaſt variance from the very form of words, no, not ſo much as in the Language uſed and directed by Law for the ſame.

The King may grant by his Letters Patents Authority to Corporations to hold Plea of all Actions, and to hear and determine Pleas of the Crown that ſhall ariſe within the diſtrict of the reſpective Corporation. It ſeems incident to his Power of incorporating and inſtituting Polities: That the King ſhould grant Authority to thoſe little Polities or Corporations to Govern themſelves, and do Right amongſt the Members thereof according to Law, for in this matter that of *Tully* muſt be obſerved, *Contra naturam publicam nihil contendamus eâ tamen conſervatâ propriam ſequamur.*

And this conceſſion of Judicature to Corporations is with Reaſon allowable, for that the perpetuity of ſuch grants exempts them from being ſuſpected and favouring of any particular deſign. And they do not import any favour or advantage to any particular Perſon, which in the Commitment of Adminiſtration of Juſtice is by no means to be allowed. But Authorities that in the manner of creating them ſeem to have any ſuch reſpects are by the reaſon of our Law to be condemned and ſuppreſſed. And the rather, for that ſuch Authorities agreeably to the reaſons of creating them have always been executed with Oppreſſion and Vexation, and followed with grievous complaints.

To bring in uſe again antiquated Law is as unwarrantable as to make new without Authority of Parliament.

It is diſhonourable to a Government to be adminiſtred with ſhifts: to ſee it ſhifting with an Ox and an Aſſe, and putting a new patch upon old Rags to vamp out an antiquated Authority with a new Commiſſion of *Oyer* and *Terminer* moſt illegally executed. A Commiſſion of *Oyer* and *Terminer* can have no leſs diviſion than a County for its extent, nor adminiſtred to by any Officer but the Sheriff for Summoning the Countrey and returning of Jurors.

What Authority doth now duly belong to the Court of the *Marſhalſea*, upon theſe conſiderations I leave to better Judgments, and whether

they do not incur a Premunire that extend it beyond its due bounds I leave them to consider who are concerned, especially as to Pleas of the Crown that arise within the Verge and out of the Palace.

Since we have no such Officer as the ancient *Capitalis Justitiarius* the vicarious Power of that Officer cannot be Legally executed by the Steward of the *Marshalsea*: For by such an Authority the Steward of the *Marshalsea* anciently did hear and determine Pleas of the Crown committed within the Verge, and out of the Royal Palace, as we have undeniably proved.

Court of *High-Steward.*

But there was one Power and Authority that was inseparable from the Baronage, and that is the Tryal of Peers, the ancient *Curia Regis* continues to this day to that purpose, as it must, no other provision being ever since made therein. This is the ancient Court of Peers, the *Curia Regis* when revived. The Power and Authority of the ancient *Capitalis Justitiarius* is as often revived, as that Court is erected for Tryal; for Offices at Common Law can be no more nor less than the Law appointed. That he is called *High Steward* is no Objection to us, for so was the *Capitalis Justitiarius* called, and *Justitiarius* and *Seneschallus* are used one for another in the Language of those times; Sir *Hen. Spelmans Glossary* 403. And this is the true reason, I humbly conceive, of that Tradition, that the *High Steward* by the Kings constituting him such,

ſuch, hath ſuch mighty Powers that are fit to be truſted with him, no longer than while he is buſie about that piece of Juſtice for which he is appointed; and he is not to receive his Commiſſion, but juſt at his entry upon the buſineſs of the Court, and not before. The Power of this *Capitalis Juſtitiarius* was the ſame with that of the *Mair of the Palace* in *France*, from whence the Conquerour brought this Office, which was the ſame, or greater, with the Authority of the *Præfectus Prætorio* amongſt the *Romans*.

It is a thing to be wiſhed, that Gentlemen that apply themſelves to the ſtudy of Antiquities that relate to our Laws and Government, would deſign to adorn and cultivate the preſent Laws, and to make out their reaſonableneſs, rather than to innovate upon us, by bringing back what is obſolete, rejected, and antiquated; and that they would contribute what they can to refine it from many abſurd reaſons, that diſhonour our Faculty, which are the beſt our Books afford even for ſome of the *Regulæ juris*.

I ſhall inſtance only in one or two of them: Why the Father cannot inherit the Lands of the Son, it is told us for a reaſon in our Books, that *Terra eſt quid ponderoſum*, and will not aſcend in the right line; whereas the true reaſon is this, the Lord that firſt granted the Fee, neglected the Father, gave it to the Son and his Deſcendents, and to the Family he ſhould derive from himſelf; and when this was after alienated in Fee, the deſcent

of it was directed agreeably to the manner and direction of the first Collation. If the Father gave the Son the Estate, there was a Tenure created, of the Father, as there was in all Feoffments of the Feoffer, before the Statute of *Quia emptores terrarum*; and it is a Rule in Law, that a man cannot be *hæres & dominus*; *Stamford's Exposition of the Prerogative, chap. 5. fol. 23. B.* For Example. If before the Statute of *Quia emptores*, the eldest Son had enfeoffed the middlemost, to hold of him, and had taken his Homage; the middlemost dieth without Issue, the youngest should have had the Land, and not the eldest. Howbeit if there were no youngest Son, or any other Heir, then the Feoffer might claim the Land again by Escheat, and not otherwise.

Another is this: For a reason in our Law, why the Children of several *venters* shall not inherit each others Lands: it is told us, it is so because they are but of the half blood to one another, and therefore the Brother of the first *venter* shall not succeed to the State of the Brother by a second *venter* which dies without Issue. But the Land must descend to the Uncle, But this Uncle can be but of the half blood to the Nephew, and the very reason that is given for the Law makes the Law unreasonable. But the true reason why the Brothers of different *venters* cannot inherit each other, is a disallowance that our Ancestors the *Saxons*, had of second Marriages, they,

they, as moſt of the *German* Nations, eſteeming them as *concubinat*, and at beſt, but as permitted Fornication: So *Tacitus* tells us, in his Book, *de moribus Germanorum*, that they did not allow of Second Marriages, *Ne non maritum, ſed matrimonium ament, non nuptam ſed nuptias*; and agreeable to this Opinion, are deſcents governed in ſeveral Countries in *Germany* at this day.

Court of *Chancery*.

This (tho' it is apt to excite all Gentlemen of the Robe, never to acquieſce in any reaſon of the Law that is not ſence, which if they do, they will forfeit their Reaſon and Judgment) I ſhould not have been ſo impertinent as to have mentioned in this Diſcourſe; but that this dealing in Cauſes without the exerciſe of clear reaſon about them, hath brought it to paſs, that much of our Law will not ſort to Natural Reaſon and Juſtice; and this gave one great occaſion to the Riſe and Growth of the Court of Chancery. Since it came in my way, to ſhew the Original of the other Courts; and the Reader may wonder, that there is nothing in Antiquity, that gives Authority to ſo celebrated, and ſo buſie a Court as this is at this day: I will here offer an account of the Riſe and Growth of it; which will prepare the way for taking of it down, which is no leſs a Reproach, than it is a Grievance to the Nation.

There is nothing ſo great a Reproach to a Nation,

Nation, than to have Laws that are confeſſedly not good and equal, to continue them and yet to allow of an Authority to reproach them with Iniquity: that our Courts of Law ſhould be under Rules and Obligations, to pronounce Judgments, which a ſingle Gentleman ſhall authoritatively controul and condemn, as unrighteous; that Law and Equity ſhould be Oppoſites; That a Judgment muſt be made up, and form'd in a Caſe, and what is equal, juſt and fit therein, muſt not be conſidered, though it can be, and will, in another Court have a judicial Conſideration.

Our Judges at Law, take themſelves bound, not to hear, or regard the Allegations of the Defendants againſt the Plaintiffs pretence, which ought in good reaſon to bar them therein; or, at leaſt, qualifie the Judgments; when the ſame matter ſhall be heard in Chancery, and prevail either wholly to ſet aſide, or to qualifie the ſame Judgments.

This is not only to be complain'd of as derogatory to the Reputation of the Wiſdom of the Nation; but is inſufferably oppreſſive to the Subject, by the multiplicity of Suits, tedious and vexatious Delays: Nay, by this ill Contrivance, the Expences ſometimes equal, ſometimes exceed the Value of the Right, which is litigated, and which is worſe, the Event of the Suit is very uncertain and fortuitous.

But this is not all; our Law, it ſeems, is not a Rule

a Rule that extends it ſelf to all Cauſes; and we have Rights, confeſſedly ſuch, and which can be judicially remedied, to which the Common Law extends no Relief: For a thouſand Cauſes in a year, are for that reaſon heard in the Court of Chancery.

Two ſuch Reproaches, no Nation but ours hath ever yet incurr'd or ſuffer'd, acknowledged, and yet not redreſſed: For Law and Equity is no where elſe oppoſed, and every Right hath its Remedy by the Law of the Countrey, but ours.

The firſt great occaſion to the riſe of the Chancery, was, Feoffments, made upon Truſt, to uſes in the time of our Warring about the Title of the Crown, to avoid Forfeitures. The Judges, in tenderneſs to the Condition and neceſſity of thoſe times, did Judge, that an Uſe was no Right (though moſt certainly it is. For it is *jus ad rem*) that nothing might be forfeited when it depended upon chance whether a man ſhould be a good Subject, or a Traitor. And the ſame conſideration eaſily admitted of any Authority that would interpoſe to relieve againſt thoſe who would abuſe, or deny ſuch Truſts; and no body brought into queſtion, that authority, by which a piece of Juſtice, ſo neceſſary to the Nation, was adminiſtred.

Another great reaſon of the buſineſs of the Court of Chancery, is that which we before mentioned, that we have not improved the Statute

Statute of *Weſt.* 2 *C.* 24. And a third, is the ill conducting of our Laws: our Ancient Judges were infected with the Monkery of that time, men of no Learning, and of a vain Subtilty. The Theology of thoſe times was inſipid, and moſt trifling, and the Adminiſtration of Juſtice agreeably turned into a vain Art of Diſputing the *apices juris*; and a ſubtilty was uſed, too fine for buſineſs, and to govern the Affairs of Men that governed themſelves by none of thoſe Superfineries. They argued without Diſcourſe, or diſcourſed from poſitive Rules, or Preſidents which were almoſt the ſame with them as Rules of Law, and not from the true Merits of the Cauſe, and its own particular reaſons of Right.

And the Common Law, which is *Lex non ſcripta, i. e.* that which a wiſe Judicature ſhould declare, upon the conſideration of the preſent Caſe, was by the Proceedings of our Courts, turned into a *Lex ſcripta*, poſitive and inflexible; and the Rule of Juſtice could not accommodate it ſelf to every Caſe, according to the Exigency of Right and Juſtice.

But if it were conſider'd, that there can be no Preſcription againſt Juſtice, that no Preſidents, where a Right hath not been relieved, can be pretended why it ſhould not be aſſiſted hereafter: And if a matter pleaded in Bar, upon which the Defendant will be certainly relieved in Chancery, may, notwithſtanding it hath

hath not heretofore, be hereafter allowed in our Law-Courts, we ſhould be in a great meaſure reſtored to our eaſie, expedite, cheap, and certain Juſtice, which the Methods of our Common Law-Courts hath moſt excellently provided, until a Parliament, ſome time, or other, may conſider, whether it be not fit to take the Chancery quite down, by inabling Courts of Law, to do true Right in all Cauſes that ſhall come before them: For nothing renders the Chancery tolerable, but the moſt exemplary Virtue, and Great Endowments of our preſent Lord Chancellour, in which he is not like to have a Succeſſor.

CHAP. XVII.

BUT to return to the *Curia Regis*, it was not only the great Judicature of the Nation formally; but it was alſo materially our Parliament too.

That this *Curia Regis* was not without any more, the Parliament of theſe times, is evident: firſt, that the *Curia Regis*, was Summoned by a general Writ of Summons, directed to the Sheriffs in this Form, *viz.* *Rex Vicecomiti* Northamptoniæ, *&c. præcipimus tibi quod ſummoneri facias Archiepiſcopos, Epiſcopos, Comites, Barones, Abbates, Priores, Milites, & Liberos homines,*

homines, qui de nobis tenent in Capite, &c. Rot. Clauſ. 26 H. 3. M. 7. Dorſo. This muſt neceſſarily be this *Curia Regis*, in Diſtinction to a Parliament.

For that in the Grand Charter of King *John*, made in the laſt year of his Reign, it was granted, that *Ad habendum Commune Concilium Regni, de auxilio aſſidendo, (aliter quàm in tribus prædictis caſibus; i. e.* Thoſe caſes of Aid, to make the eldeſt Son a Knight to Marry the eldeſt Daughter, and of Ranſom, and *de Scutagiis aſſidendis) faciemus ſummoneri Archiepiſcopos, Epiſcopos, Abbates, & Comites, & majores Barones Regni. ſigillatim per Literas noſtras. Et præterea faciemus ſummoneri in generali per Vicecomites & Ballivos noſtros omnes alios, qui in capite tenent de nobis.*

At preſent we make no other uſe of this Grand Charter, than to prove it a diſtinctive mark of a Parliament, where the Summons are perſonal to the Biſhops, Earls, and the greater Barons. This Charter of King *Johns* declares the ancient uſage of Summoning the greater Barons, by ſpecial Summons to them ſeverally directed; for that the Kings before him, as Sir *Hen. Spelman* in his *Gloſſary, p.* 80. *Propter crebra bella & ſimultates, quas aliquando habuêre cum his ipſis majoribus ſuis Baronibus, alios etiam eorum interdum omitterent, & ægrè hoc ferentes Proceres Johannem adegêre ſub magno ſigillo Angliæ paciſci, ut Archiepiſcopos, Epiſcopos, Comites, & majores Barones Regni, ſigillatim per Literas ſummoneri faceret.* By which

it

it was provided, that all the Barons ſhould have *pro more* Summons to the Parliament, that none of thoſe great Barons ſhould want his ſeveral Summons, and they had anciently ſeveral Summons, for in a general Summons no body was excluded. By which it doth appear that the Council at *Northampton* wherein *Thomas of Becket* was brought in Judgment, was a Parliament, and not the *Curia Regis*; for that the Biſhops had their ſeveral Writs of Summons, which appears in that *Fitz Stephens* tells us as matter of obſervation, that *Thomas of Canterbury* had not his Writ of Summons, but was cited as a Criminal to anſwer; which we before obſerved.

And this was but neceſſary, that when the Tenents *in capite*, or Barons, which principally at leaſt made the Parliament, were to be conſulted about ſome arduous Affairs, that they ſhould have notice and a ſolemn intimation thereof, and their preſence required and enjoyned, by Writs to them particularly and perſonally directed.

Beſides that, it was agreeable to all the forms of Government then in uſe, to have their ordinary and extraordinary Council. For, *Omnes Germanicæ Originis Reges atque Imperatores, duplici Concilio antiquitùs utebantur, altero ſtatario, qui Senatus dicitur ad res quotidianas, altero evocato, concilium aut conventus ordinum ad res momenti majoris*; as *Grotius* aſſures us.

Neither can it be denied by any man of modeſty, who hath heard any thing of the ſtate of

our

our Government before the Conqueſt, and that knows that many ancient Burroughs ſend Burgeſſes to Parliament by Preſcription, and will conſider the Records produced by Mr. *Petit*, in his very learned and elaborate Book, called, *The Ancient Right of the Commons of England*, to prove the Right of ancient Burroughs to ſend Members to Parliament who repreſent them; but that ſuch, though not Suitors to the *Curia Regis*, were Members *de jure* of the great Council of Parliament. But the truth is, they are not mentioned in any Record or Hiſtory of any Parliament, from the beginning of the Conquerours Reign to the end of *Henry* 3. as a diſtinct part of the Parliament of *England*, their Numbers and Qualities were little and mean, of no conſideration in compariſon to that great Body of the Baronage that conſtituted our Parliaments in that time; but our Parliaments ſeem by the ſtyle uſed in Hiſtories and Records, to be only the Baronage of *England*. *William* the Firſt in the fourth year of his Reign, *Conſilio Baronum ſuorum* (ſaith *Hoveden*, *p.* 343.) *fecit ſummoneri per univerſos Conſulatus Angliæ, Anglos nobiles & ſapientes, & ſua lege eruditos, ut eorum & jura & conſuetudines ab ipſis audiret.* Thoſe who were returned ſhewed what the Cuſtoms of the Kingdom were; which with the aſſent of the ſame Barons were for the moſt part confirmed in that Aſſembly, which was a Parliament of that time, ſaith Mr. *Selden*, *Titles of Honour*, *pag.* 701.

Amongſt

Amongſt the Laws of *Hen.* 1. publiſhed by Mr. *Abraham Whelock*, *cap.*2. I find thus; *Foreſtas communi conſenſu Baronum in manu mea retinui, ſicut pater meus eas habuit.* And after, *Lagam Regis Edwardi vobis reddo, cum illis emendationibus quibus pater meus emendavit conſilio Baronum ſuorum.* The Parliament is ſtyled *Commune Concilium gentis Anglorum*; and at the ſame time, *Commune Concilium Baronum*; and alſo *Clerus & Populus*, *Matth. Paris*, *fol.* 52, 53, 54. And this is ſometimes called *Communitas*, for that it repreſents the whole People, and involves their conſent. Which appears by 48 *H.* 3. *Pars unica M.*6. *D. Hæc eſt forma pacis à Domino Rege, & Domino Edwardo filio ſuo, Prælatis & Proceribus omnibus, & Communitate Regni Angliæ, communiter & concorditer approbata.* And that *Communitas Regni* hath no other ſenſe than *commune concilium Regni*, and uſed as a comprehenſive term of them that made it, is evident; for that it is ſaid in the ſame Record, *Si videatur communitati Prælatorum & Baronum.* And again, *Per conſilium communitatis Prælatorum & Baronum.* Further, *Magnates & Univerſitas Regni*, are ſometimes uſed for the Parliament, *Matth. Paris*, 659, 666.

After King *John*'s Charter, wherein it was eſtabliſhed, that thoſe that were not *Barones majores, qui tenent de nobis in capite*, ſhould be generally ſummoned. It is obſervable, that the *Barones minores* are ſo mentioned, as if the name of Barons were not to belong to them. Agree-

able thereto is that we have mentioned in the ſtyle of our Parliaments, of *Milites liberè tenentes*, *& alii fideles*, and are all involved in this general, *Et univerſi de Baronagio Regni Angliæ.* Several Inſtances of this are in Mr. *Petyt*, aforementioned, p. 111, 112, 113, 114, 115, 116. beſides that, many Inſtances of the like Stile of Parliaments in thoſe times are obvious.

That our Parliaments in thoſe times were thus conſtituted, is ſo clear, that it cannot be diſſembled: But I do not deny, but upon a change in the Succeſſion to the Crown, there might have been in this time extraordinary Conventions of the People, to declare their Univerſal Aſſent, for better aſſuring ſuch Succeſſor, diſcountenancing the Rival Prince, and preſerving the Peace; as in the Caſe of *William* the Second, *Henry* the Firſt, King *Stephen*, and King *John*, which hath been uſual in other Countreys, in mighty Diſtreſſes of State; ſuch were in uſe amongſt the *Jews*. *Joſephus* calls ſuch an Aſſembly, πάνδημον ἐκκλησίαν. *Grotius* in his *Annot.* p. 200. tells us, *Solitos fuiſſe Judæos interdum in rebus ad ſummam Religionis, aut Imperii ſpectantibus advocare ad Synedrium quotquot habere poterant tribuum Primores, aliiſve honoribus præditos, ut quod conſtituerunt legis potius a populo probatæ, quam Senatus conſulti haberet auctoritatem.* With the aſſent of ſuch an Aſſembly as this; at leaſt King *John* ſhould only (if ſo) have made this Kingdom Tributary to the Pope; though I believe, what he did in it, he did

did without, and againſt the Aſſent of that Parliament, in which he could only therefore offer to do it. He did no more *effectivè*, than of Right he could, which is nothing. That which was done, was without the Conſent of his Biſhops and Barons, as appears by a Letter of his to the Pope, in thoſe words recited by Mr. *Petyt*, in his mentioned Book, *Cum Comites & Barones* Angliæ *nobis devoti eſſent antequam Nos, & noſtram Terram Domino veſtro ſubjicere curaſſemus, Extunc in Nos ſpecialiter ob hoc ſicut publicè dicunt violenter inſurgunt.* And by another Letter of his, to the Pope, recited, p. 163. Wherein he complains of the Biſhops Diſobedience on this Occaſion; which I the rather take notice of, that the Cauſe of our Government might not be betrayed, by depending upon ſuch weak Inferences as thoſe, *viz.* that there was a Houſe of Commons at that time, which did not conſent to the vaſſallating of the Kingdom, by King *John* to the Pope: For that otherwiſe, it could have been validly done. And that, if our preſent Houſe of Commons, in the ſame Form as it is now conſtituted, was not in Being ever after the Conqueſt, it is not therefore an Eſſential part of our Government; for if our Government muſt take its Fate upon ſuch Iſſues as theſe, I am ſure we ſhall not long hold it. The greateſt Truths are betrayed by weak Proofs, and the cleareſt Right, ſometimes loſt, by putting it upon an uncertain or improbable Iſſue. This is certain, that what-

ever change of Government is introduced by the Conſent of the Prince, and that Alteration aſſented to and embraced, avowed and owned by every man of the Community, by Actions, and other open Declarations of a full Conſent; and this continued for Centuries of Years; and in all that time, applauded, and found agreeable to the Intereſt of the Prince and People, and the Old Government aboliſh'd and impracticable, the very matter of it ceaſing; and it become a thing impoſſible, as well as not deſirable to be reſtored. I ſay, whatever Conſtitution is thus introduced and eſtabliſhed, is as unmovable as unalterable, (or no Government is) as if it had been ever ſo: For there can be no Government in this World that is eternal; how this Change came, we ſhall ſpeak to by and by.

But for the ſake of Truth, I muſt confeſs, that I have no reaſon to believe, that the Counties, in all this time, had their Repreſentatives in Parliament, by the formality of a Choice. But this is a great miſtake, that the People cannot be repreſented, but by ſuch as are from time to time choſen by them; whenas every Government is the Repreſentative of the People, in what they are to be governed by it, and by their Conſent to it in the firſt erecting thereof, they do truſt their Governors with the Rule and Order of their Lives and Eſtates, for the Common-weal: For Government, as well as Law, is *Reipublicæ communis ſponſio*, to uſe *Bracton's*

ston's Words. I cannot eaſily tell which is more eligible for the aſſuring us of good Men in the Common Council of the Kingdom, whether the Choice, and Deſignation of a Perſon thereto by his Character, and a General Rule, or by the contingent Suffrages of the People. But they are, I am ſure, as much our Repreſentatives, who are appointed thereto by the Conſtitutions of the Government, embraced and conſented to by the People, as thoſe are, whom the People nominate for that purpoſe. I know no reaſon therefore why any ſhould think, that nothing is ſtable in our Government, but what hath been ever ſo, and in the ſame Form; or that any man ſhould be ſo affrighted with the Objection (as if it made our Government ſhake) which ſome ſlight Antiquaries make (for little Learning in Antiquity will ſerve for that purpoſe) *That our Parliament was not at all times ſuch as it is at this day.* It ſufficeth to me that it was always materially the ſame. When the Conqueror did innovate his Tenures *in Capite*, and made all men of great Eſtates, Barons; and by their Tenures and Eſtates, Members of Parliament, we had then ſuch Laws, *quas vulgus elegerit*; and then we had materially our three Eſtates, though not ſo well ſized and ſorted as ſince. I thought fit to ſay this, for the preventing the World's being troubled with ſuch Impertinent Labors, and to divert thoſe that thus employ themſelves to undertakings more uſeful to the Publick, and advantageous to themſelves.

We had then (I say) many great Freeholders in every County, that by their Tenures were Members of Parliament, whereas now we have but two; and though the People did not chuse them, yet the men of that Order seem chosen once for all interpretatively, by the People in their consent to the Government; and they might be reasonably presumed to be faithful to the Commonweal, from their own great Concernments therein. In this Constitution scarce any man that was fit to be chosen, but was without the Peoples choice a Member of Parliament; as now they have more who are fit to be chosen than they can chuse. So that the *Barones minores* who were then instead of Knights of the Shire; and the *Barones majores*, Bishops and Earls, &c. did then as now make the Parliament.

Besides the *Barones majores* and *minores*, there was at this time a distinction between the *Barones Regis* and *Barones Regni*, which I will here explain, to prevent any mistake that may grow thereupon. The *Barones Regni* were Barons by Tenure, and made part of the Government by the Constitution of the first *William*; and so in process of time called *Barones Regni*, because they had by continuance of that Constitution acquired a fixed right to that Honour. But because of the frequent Wars between the Barons and the Kings at that time, they did omit to summon some who were Barons by Tenure, and now duly called *Barones Regni* to Parliament, and called others to Parliament that had no

right

right to be called *ratione tenuræ*, and these they called *Barones Regis*. This was ill taken by the Lords, and was one of the occasions of their War with King *John*; upon which they did obtain his Charter for remedy as followeth; *Barones majores Regni sigillatim summoneri faceret*. The truth of this as to the fact will appear by the Histories of those times; and that this is the reason of that distinction of *Barones Regis* and *Barones Regni*, doth appear by the recited Charter of King *John*, where the *majores Barones* are called *Barones Regni*; for the Barons were more concerned for the losing of their Honours, than they were at the communication of the like Honours to others, and with reason; though all Honours are lessened by the numbers of those that participate of them.

The inconveniences and mischiefs of this Constitution were very great and very sensible, by making the Government thus upon the matter to consist of one Order; there was no third to moderate and hold the balance. The Honour of the great Nobility was lessened, by an Equality of Suffrage in the great Council of the Kingdom, yielded to the Tenents *in capite*, and they were not so concerned to support the Dignity of the Crown for the maintaining their own, which in that Constitution could not be great. It had the faults of either House, and the virtues of neither: they pressed hard upon the King, and were uneasie and oppressive to the People: they were not reverent of the Crown,

nor tender of common right. The great Charter provides againſt the Oppreſſions of great men, as it doth for bounding the Prerogative. Our mixt Monarchy was out of tune, by the Ariſtocratical Power of the Baronage, now become too exceſſive by the policy of the Conquerour; by his advancing too great numbers to that Dignity, too great to depend upon the Crown, or to be govern'd by it unaſſiſted. That which the firſt *William* intended and deſigned for the eſtabliſhment of his Conqueſt, and of the Peace of the Kingdom, made it very eaſie to afflict bad Princes. But by ſeveral ſteps we recovered, being taught and inſtructed to it by our Experience, and the ſufferance of great Calamities, ſuch a Repreſentative, that might moſt certainly effect what in all Ages was intended and deſigned, and that nothing ſhould be Law or civilly juſt, but what the People aſſent to, and by which their Perſons and Rights are ſecured and defended, which is the ſole end of Government.

But evident it is, that this more equal and clear repreſentative, which we now enjoy in our Houſe of Commons, grew upon the reducement of the exceſſive number of Barons, ſo great that it made them a Tumult rather than an Aſſembly, and was induced for the reducement of the power of the greater Barons: for in the Parliament of 49 *Hen.* when but 25 Lay Barons were ſummoned, (tho' in the 41 year of his Reign he numbered 250 great Baronies in *England*) we find Writs for electing to a Parliament at *London*, two Knights, Citi-

Citizens, and Burgeſſes, and Barons for the Cinque-Ports: before that time, none were found, nor any Foot-ſteps of Right for the Counties ſending Knights to Parliament; though there is a clear Right appears for the Burroughs to ſend Burgeſſes; which we ſhall ſpeak to afterwards.

It will not be impertinent, here to add, that the Government of *Scotland*, which runs parallel almoſt to our *Engliſh* Government, found it inconvenient, that all the Tenants in *Capite* ſhould reſort to their Parliaments; and therefore, they were reduc'd in this manner; *viz.* their *Barones Minores*, or Tenants in *Capite*, in every County, chooſe two of their own number to Parliaments; which, at this day, they call the Barons for Counties: whereas, all our Free-holders chooſe their Knights of the Shire; and our Elections are not reſtrained to Tenants in *Capite*. And this made it more reaſonable for our Repreſentatives of Shires (together with the Burgeſſes) to become, in proceſs of time, a diſtinct Lower Houſe; whereas, their Barons of Shires ſit together with the Lords, and vote in Common with them. The Knights of the Shire, which made the principal part of the Repreſentative of the Commons, having no Relation to the Houſe of Peers, or the Baronage of *England*; becauſe, choſen by all the Free-holders indifferently, though not Tenants *in Capite*.

But to return to our Hiſtory that deduceth the Change of our Government. That ſome great

great matters for publick Good and Eſtabliſhment of the peace of the King and Kingdom, was treated of in this Parliament, (they did to be ſure eſtabliſh this new Form of a Parliament) will appear by a Form of a Writ of Summons, to the Biſhop of *Durham*, to that Parliament; which I will here tranſcribe. Henricus *Dei gratia, Rex* Angliæ, *Dominus* Hiberniæ, *& Dux* Aquitaniæ, *venerabili in Chriſto patri R. Epiſcopo Dunelmenſi ſalutem. Cum poſt gravia turbationum diſcrimina dudum habita in Regno Noſtro, Chariſſimus filius* Edwardus *primogenitus noſter, pro pace in regno noſtro aſſecuranda, & firmanda obſes traditus extitiſſet & jam ſedata (benedictus Deus) turbatione prædicta ſuper deliberatione ejuſdem ſalubriter providenda & plena ſecuritate, & tranquillitate pacis ad honorem Dei, & utilitate totius Regni noſtri firmanda, & totaliter complenda ac ſuper quibuſdam aliis Regni noſtri negotiis, quæ ſine Conſilio veſtro, & aliorum Prælatorum, & magnatum noſtrorum volumus expediri, cum eiſdem tractatum habere nos oportet; vobis mandamus, Rogantes in fide & dilectione quibus nobis tenemini, quod omni occaſione poſtpoſita, & negotiis aliis prætermiſſis ſitis ad nos* Londiniis *in octabis Sancti* Hilarii *proximo futuris, nobiſcum & cum prædictis Prelatis, & magnatibus noſtris, quos ibidem vocari fecimus ſuper premiſſis tractaturis, & conſilium impenſuris, & hoc ſicut nos & honorem noſtrum, & veſtrum, necnon & communem Regni noſtri tranquillitatem diligitis, nullatenus omittatis, Dorſ. Claus. 49 H. 3. M. 11. in Schedulâ.*

I ſtrongly incline to believe, That this King did call in the Commons by their repreſentatives, (the *Barones Minores* being diſcharged) to moderate between him and his Barons, which became after (to be ſure, however it was before) the ſtanding Repreſentative of the people. Something like this, was before attempted by King *John*, by this Writ of King *John*, the like of which, is not found. *Rex vicecomiti* Oxoniæ *ſalutem; præcipimus tibi quod omnes milites Ballivæ tuæ qui ſummoniti fuerunt eſſe apud* Oxoniam *ad nos a die omnium Sanctorum in* 15 *dies venire facias cum armis ſuis, corpora vero Baronum, ſive Armis ſingulariter & 4 diſcretos milites de comitatu tuo illuc venire facias ad nos, ad eundem Terminum ad loquendum nobiſcum de Negotiis Regni noſtri; teſte meipſo apud* Written, 11 *die* Novembris, *Dorſ. Clauſ.* 15. Johannis *Regis, Part* 2. *M.* 7. But that *Hen.* 3. in that Parliament, had ſome notable Expedient for the Eſtabliſhment of the publick Peace and Quiet. His Hopes and Deſires of accompliſhing it, will appear by the Stile of the fore-recited Writ, if compared with another Writ of Summons, in a Curſory Form, in the 26th. Year of his Reign, which was thus; Henricus, *&c. Venerabili in Chriſto Patri* Waltero *Eboracenſi Archiepiſcopo ſalutem; mandamus vobis quatenus ſicut & honorem noſtrum pariter & veſtrum diligitis, & in fide qua Nobis tenemini, omnibus aliis negotiis omiſſis ſitis ad nos apud* London, *a die Sancti* Hillarii, *in* 14 *dies, ad tractandum nobiſcum una cum cæteris magnatibus noſtris ſtatum noſtrum,*

noſtrum, & totius Regni noſtri ſpecialiter tangentibus & hoc nullatenus omittatis.

But ſhortly, to deduce the Hiſtory of this Change, (which is but conjectural) under the Authority of Mr. *Selden*, in which, nothing is certain, but that the Biſhops continued in the Change of the Baronage in the ſame State of greatneſs mentioned, the ſame Order, had their Writs of Summons continued to them as before; and, though many of the Regular Barons were after omitted to be ſummoned to Parliament, yet not one Biſhop ever wanted his Summons. This Diſcrimination ſhews, That they were now Barons by Writ, as the Lay Barons were, and for the ſame Reaſon; that is, becauſe Tenures did not now make them Barons. But ſuch only were ſo, who had the King's Writs ſent to them of Summons to Parliament: So that the Biſhops are not now to be reckoned *Barones feudales*, or Barons by Tenure, but *Barones reſcriptitii*, as all Barons at this day, except thoſe by Patent, which are ſo, without any reſpect to Tenure.

The Feudal Baronage, as we ſaid, was as large, and as numerous as the Tenures by Knights Service in Chief, which were capable of being multiplyed ſeveral ways, for every part of the Fee however divided, the Services reſerved upon that Fee, that were entire and indiviſible, were to be performed by the ſeveral Proprietors of the ſeveral parts of the divided Fee.

The

The Feudal Baronies beſides, were ambulatory, not fixed to Families; but aſſignable, as Eſtates, and paſſed with the Lands. Who ſees not, that by this Conſtitution and Nature of Baronage, a great many mean perſons, not agreeable to that high Order, muſt be entitled to it, and ſo in truth it happen'd? And hereupon, a Diſtinction was made firſt between *Barones Majores*, & *Barones Minores*. The *Barones Minores*, ſoon loſt the Title of Barons altogether. This is conjectured, by Mr. *Selden*, to be before the latter end of King *John*'s Reign, and their legal Stile became *Milites*, or *Libere Tenentes*; which ſome, upon a miſtake, anticipating the Change of the Government, made in *H.* 3. time, think, when they meet with *Milites*, or *Libere Tenentes* in Parliament, they have found Knights of the Shire, choſen for Repreſentatives in Parliament.

And, if they retained the Name and Stile of Barons, it was now but abuſively applyed to them; for, their Baronies were in Truth eſtimable, but as Knights Fees only: and, of this ſort of Barons, there remains ſome to this day.

This appears by a Paſſage in the grand Charter of King *John*, made in the latter end of his Reign, as it is in *Mat. Paris*, 343. *Ad habendum commune concilium Regni, de auxilio aſſidendo aliter quam in tribus caſibus prædict.* (theſe three Caſes of Aid to make the Eldeſt Son a Knight

of

of Aid, to marry the Eldeſt Daughter, and Aid of Ranſome are underſtood here, as is plain by the Charter) *Et de ſcutagiis aſſidendis faciemus ſummoneri Archiepiſcopos, Epiſcopos, Abbates, Comites & majores Barones Angliæ ſigillatim per literas noſtras. Et præterea faciemus ſummoneri in generali omnes alios qui in Capite tenent.* This was one Step to remove theſe *Barones Minores*, from the Dignity of Barons; which by *H.* 3. were quite diſcharged, and never appeared after in Parliaments, except choſen Knights of the Shire.

But becauſe I find this great Charter of King *John*, not well underſtood by ſeveral conſiderable Writers, nor by Mr. *Selden* explained, I will offer my Thoughts, and the rather, becauſe it is not impertinent to our preſent purpoſe. The firſt part to which the part before-recited, doth refer is thus: *Nullum ſcutagium, vel auxilium ponam in regno noſtro, niſi per commune concilium Regni noſtri niſi ad corpus redimendum, & ad primogenitum filium noſtrum militem faciendum & ad primogenitam filiam noſtram ſemel maritandum, & ad hoc non fiet niſi rationabile auxilium*; and then follows, *& ad habendum Concilium Regni aliter quam in tribus caſibus prædictis & ſcutagiis aſſidendis, &c.* I conceive, that by the firſt *Commune Concilium*, he means the *Curia Regis*; and that he did grant that out of that Court, he would not impoſe Eſcuage, or aid upon his Tenants, except it were thoſe three Caſes of Aid mentioned: For Eſcuage was then and after aſſeſſed in that Court (and that properly, as being

being in general due by their Tenure, the Opportionment was there to be made, which was proper for the King's Tenents to do amongſt themſelves) until the Statute of 34 *E.* 1. *de Tallagio non concedendo*; in which it was provided, that no Tallage, or Aid, ſhall be put or levied without the Will and Aſſent of the Archbiſhops, Biſhops, Earls, Barons, Knights, Burgeſſes, and other Free Commons of the Realm. But by this Charter it was provided that all Aids other than thoſe three mentioned Aids, and Eſcuage, which were due by Tenure, ſhould be levyed by the *Communs Concilium*, that is, a Parliament: the manner that he directs in his Charter how this *Commune Concilium* ſhall be conven'd, beſpeaks it a Parliament, for he there declares, how he would have it ſummoned as to his Baronage, who in that part of his Charter, were to receive their Satisfaction; and for the Liberties of ſending Burgeſſes to Parliament, they are likewiſe confirmed in the ſame Charter; and therein provided for. So that I am perſuaded, that the *modus Parliamenti*, in King *John*'s Time, was in the ſaid Charter declared.

It was probable, that before this Charter, there was ſome Law to declare who thoſe *Majores Barones* were, and who thoſe Tenants in Chief were, that ſhould be accounted now, no longer Barons; and after the Tenants in chief had loſt the Honour of a particular Summons to Parliament, and the Stile of Barons, it was leſs difficult

difficult for those Great Barons, to procure a Law to exclude them wholly from having any Right to sit in the Parliaments under the name of Tenant in Chief only. And to this purpose, doubtless, saith Mr. *Selden*, some Law was afterwards made, that none should come to Parliament, as a Baron, (that is, by vertue of his Tenure) but such as should have several Writs of Summons directed to them; in which number, not only all those of the Ancient and Greater Barons were comprehended; but others to whom Writs should be directed; which is in effect, that no Tenure should any longer make a Baron of the Kingdom; but that the Writ of Summons only should make a Baron.

It is not improbable for the reasons aforementioned, that such Law was made about the 49 *H.* 3. and farther, for that we find, that the Abbot of *Leicester*, in the 26 *E.* 3. was discharged from being summoned to Parliament amongst other reasons, that he was not summoned to Parliament before the 49th year of *H.* 3. and after that *Interpolatis vicibus*; as if part of the Constitution had been that those of the Ecclesiasticks, who at that time were accounted the *Barones Majores*; so declared by having Writs of Summons to Parliament, should have Writs of Summons to Parliament, thence after in Succession: And herewith agreeth Mr. *Cambden*, *Brit. fo.* 122. *Henricus tertius ex tantâ multitudine quæ seditiosa & turbulenta fuit, optimos quosque rescripto ad Comitia Parliamentaria evocaverit, ille*

ille enim (ex ſatis antiquo ſcriptore loquor) poſt magnas perturbationes, & enormes vexationes, inter ipſum Regem & Simonem de Montfort, & alios Barones, motas & ſopitas; ſtatuit & ordinavit quod omnes illi Comites & Barones, Regni Angliæ quibus ipſe Rex dignatus eſt brevia ſummonitionum dirigere venirent ad Parliamentum. Et non alii, niſi forte Dominus Rex alia illa Brevia eis dirigere voluiſſet. And this being begun about the end of *Henry* the Third, was perfected and continued (ſaith Mr. *Cambden*) by *Edward* the Firſt and his Succeſſors. This Author ſeems to be of very great Authority with Mr. *Cambden*: The Objections made to his Credit by Mr. *Selden*, who is pleaſed to fix this alteration to King *John*'s time, not long after his Great Charter, *Titles of Honour*, *fol.* 713. are eaſily removed. They are theſe. *In all occurrences* (ſaith he) *that I meet with ſince that Grand Charter, I find no mention of any Intereſt that thoſe other Tenents in Chief*, eo nomine, *had in Parliament, who doubtleſs were the Perſons that were excluded from it whenſoever any ſuch were made. And beſides we have ſome good Teſtimony of Barons being diſtinguiſhed, by holding in Chief from ſome others that held not in Chief, long before the end of* Henry *the Third* (*or the time to which that Ancient Author refers the Law of alteration*) *which ſeems to ſhew that there were then Barons by Writ only* (*according to the purpoſe of the Law we mean here*) *as well as ancient Barons by Tenure*, &c. *and that difference*

ſhould moſt properly follow ſuch a Law as we now diſpute of. That Old Author alſo uſed by the Learned Cambden, *ſpeaks of Earls no otherwiſe than of Barons, as if ſome like Excluſion had been of any of them alſo; than which nothing can be more adverſe to the known Truth, both of that Age, and all times,* &c. *Theſe things* (ſaith he) *and what we have already noted, perſwade me to give little Credit to that Relation, but rather to conclude, That not long after the Grand Charter of King* John (*like enough in his own time*) *ſome Law was made that induced the utter Excluſion of all Tenents in Chief from Parliaments, beſides the ancient and greater Barons, and ſuch other as the King ſhould in like ſort Summon.*

Theſe are Mr. *Selden*'s Objections againſt the Authority of this ancient Author in the matter in which we have recited him out of Mr. *Cambden.*

But theſe Objections are eaſily removed, I ſay; If it be remembred, That the Great Charter of King *John* provides that the *Barones majores*, which comprehends Earls, ſhould be Summoned *Sigillatim.* Beſides *Curatio indicat morbum.* The omitting to Summon the great Barons to Parliament was one of the great cauſes of the Barons Wars. We have known of late times a Writ of Summons to Parliament refuſed to a great Earl, and attempts to make the State of the Baronage ambulatory ſince it hath been fixed by the Great Charter of King *John*; and by the remembred conſtitution which Mr. *Cambden*'s ancient

ancient Author fixeth with great probability at the latter end of the Reign of *H.* 3. And yet this is one (it ſeems) of the Objections that Mr. *Selden* makes againſt the Authority of this ancient Author (*viz.*) for that he ſpeaks of Earls no otherwiſe than of Barons in this matter.

It muſt be noted alſo, that after King *John*'s Charter, tho' not before, we hear of *milites & liberè tenentes* in our Parliaments, which was the ſtyle in this interim of the Tenents *in Capite*, the *Barones minores*. And therefore we have ſome mention of the Intereſt that thoſe other Tenents in Chief, or the *Barones minores eo nomine* had in Parliament, tho' Mr. *Selden* ſpeaks as if they had none, and thence concludes they were ſhut out ſoon after King *John*'s Great Charter. It muſt be likewiſe remembred, that there was alſo Barons not ſo by Tenure, but called at the pleaſure of the King by his Writ to Parliament, called therefore *Barones Regis*, which we have before obſerved, and that long before the end of the Reign of *Henry* the Third (ſaith Mr. *Selden*) nay, in the Reign of King *John*, and before his Great Charter. This was a Grievance (as we have obſerved) to the Old Barons by Tenure, called the *Barones Regni*: but not redreſſed by the Great Charter of King *John*, as we have likewiſe obſerved.

But after the time of *Henry* the Third it became part of the Conſtitution of the Government, that the Kings Writ ſhould make a Baron. By which the *reaſon* of Baronage was changed

from that of Tenure to that of being called by Writ to Parliament. But when that was done, no Earl I believe was left out, or refuſed his Summons, and degraded with his Family from the Order of Baronage; and therefore it is no Argument againſt this change, at this time made (as we ſay) in the reaſon of the Baronage, that we have no Record of any Earl ſhut out of the Baronage.

And by this new change in the reaſon of Baronage, it was not now any longer matter of due complaint or envy amongſt the ancient great Barons, that new Barons ſhould be made at the Kings pleaſure by Writ or Letters Pattents: And this point of the Prerogative, of making new Barons, was now cleared and eſtabliſhed.

This alteration in the reducement of the *Barones minores*, and excluding them out of Parliamentary Conventions *eo nomine*, was in ſome ſort compenſated by ſubſtituting Knights of Shires in the place of the vaſt number of the *Barones minores*, as we before obſerved.

This change and alteration I believe was in *fieri* from the time after King *John's* Charter, and under conſideration, and that ſome Eſſays were made towards this change in that interim is probable from the afore-mentioned Writ to the Sheriff of *Oxford* in the fifteenth year of King *John*'s Reign. And that it continued under deliberation in that time appears further from the Great Charters of *Henry* the Third, wherein that part of King *John*'s Great Charter afore-

afore-mentioned relating to the great Council are omitted.

For if ſome great alteration therein had not been at that time meditated by the King and the Grandees, and promoted by an univerſal deſire of the Realm; that part of King *John's* Charter which relates to the great Council of the Realm, the Grievances thereby provided againſt being the greateſt Cauſes of the Barons Wars, would certainly have been confirmed.

That the afore-mentioned alteration in the Conſtitution of our Parliaments was made about the latter end of the Reign of *Henry* the Third, hath the Authority of Mr. *Cambden*, and of our great and worthily renowned Antiquary. Sir *Henry Spelman* in his *Gloſſary*, word *Parliamentum*. *Sine* (ſaith he there) *ut ſodes dicam colligiſſe me centenas, reor, Comitiorum editiones, tenoreſque plurimorum ab ingreſſu Gulielmi ad exceſſum* Henrici *exiſtentium nec in tantâ multitudine de plebe uſpiam reperiſſe aliquid.*

Againſt an aſſertion ſo ſeriouſly pronounced by ſo Worthy an Author againſt an induction ſo made by a moſt diligent and Learned Antiquary; the looſe, uncertain, and inartificial ſtyle of an Hiſtorian or two that make mention of *Plebs* and *Populus* in their ſtories of Parliaments, can be of no regard: Since whether the *Plebs* were within Doors or without, whether they had ſuffrage in the great Council, or gave their approbation without in tumultuous noiſes, they do not always diſtinctly tell us ſo, tho' ſometimes

they do, and that their aſſent was their approving without doors what was done in Parliament with loud applauſes and acclamations.

That the Conventions of the great Council were attended with Tumultuous heaps of People in favour of the ſeveral Factions in thoſe Aſſemblies is ſo notorious, that it cannot be diſſembled. To this the People were the more apt at this time, if they had not been thereto inſtigated by the Factious Grandees, becauſe they were not then repreſented in the great Councils of the Kingdom, by men of their own chuſing. In the determinations of ſuch they would have had reaſon to have been more ſecure, to be leſs ſollicitous about their reſults, and quietly to expect them at home, as we ſee they do at this day upon this bleſſed change.

But it is greatly obſervable, that this more equal and clear Repreſentative which we now enjoy grew upon the reducement of the exceſſive number of Barons, which we before noted. For in the Parliament of 49 *H.* 3. when but twenty five Lay Barons were Summoned (tho' in the 41 year of his Reign he numbred two hundred and fifty great Barons in *England*) we find Writs for Electing Knights of Shires. The Intereſt and benefit of the King and Commons in this change, we have before and after obſerved. Beſides it is without Contradiction and Objection clear, That the Barons at this time were thrown out of their Juridical Authority. The *Curia Regis* loſt its Juriſdiction, and was cantoniſed into our preſent

preſent Great Judicatures. And the Office of the ancient *Capitalis Juſtitiarius* who preſided amongſt the Barons in the *Curia Regis* was reduced.

I think it upon the whole matter, for the Reaſons we have given, very fairly probable that our preſent Parliamentary Conſtitution was at this time eſtabliſhed.

But I cannot believe it obtained by Rebellion, as ſome bad men, Enemies to our Religion and Government, deſignfully and maliciouſly in this Age ſuggeſt. For that this change was promoted by a univerſal conſent as an expedient for quieting the Nation, and extinguiſhing Wars between the King and his Barons, and did really ſecure the King from the attempts of the Barons in all after-times, and from ſuch Wars which had been for many years ſo afflictive to the Nation.

And as ſure I am that they who go about now to refix this eſtabliſhment upon a pretence that it was introduced by War and force upon the Crown, have uſe now for another ſort of War, to bring about deſigns equally miſchievous and unnatural to the Nation: But they will ſooner deſtroy themſelves than obtain their ends, for there is Wiſdom and Virtue enough yet left in the Nation, notwithſtanding all the Arts that have been uſed for many years to deprave and befool the Poople of *England*, to ſave the Nation, and preſerve the preſent Government and Religion.

CHAP. XVIII.

SO that it appears clearly, that the Feudal Baronies about this time were quite discharged so far, that no man by a feudal Barony had any Right to sit in Parliament; and those that were feudal Barons before this time, by the Alienation of their Baronies afterwards did not cease to be Barons: But for that the *Majores Barones*, and such as had then Writs of Summons, and were appointed to make the House of Lords for after-time, were then Barons by Tenure: It continued an Opinion some time, that no man was bound to answer such Writs of Summons; but those that were bound thereto by their Tenures; thence it was, that after this Constitution, many that were feudal Barons before, have taken a Liberty to entail their Baronies with the Lands that were held *per Baroniam*, upon the Heirs Males, whereby the Heirs general, or next Heir Female were excluded; and an Heir of the half blood hath enjoyed the Honour with the Lands by vertue of the Entail. We will trouble the Reader with one Instance of this kind, and that is as late as *Q. E. William* Lord *Paget* of *Beaudesert*, entailed the Baronies of *Longdon* and *Haywood*, by Fine, which descended to *Henry* his Son and Heir, who had *Elizabeth* his Daughter and Heir,

Heir, died 11 *Eliz.* after whoſe Death, *Thomas* Brother, and Heir Male of *Henry*, by vertue of the Entail, entred into the Baronies aforeſaid, and was Summoned to Parliament. This was allowable, becauſe the Honour of the Name and Family was thereby better ſupported, and the Office of a Baron continued in the Family; and the Duty of it better performed by ſuch direction of the Deſcent.

And we do alſo obſerve, that after the reaſon of being a Baron from Tenure did ceaſe, the following times kept the Old Form of Speech, & *tenere per Baroniam*, was the ſtyle uſed commonly to denote a man a Baron.

That the Law is as we have ſaid, appears for that an Iſſue at Law, whether Baron, or not, ought to be Tryed by the Parliament Records of his Summons and Seſſion there as a Baron, and not by the Records of the Exchequer to prove the Tenure. I will not therefore trouble the Reader with what is reported to us in our Year-books, nor my ſelf in reconciling the ſeeming diſagreements there about this matter, only thus, that the Judges have ſometimes ſpoken *cum vulgo*, and not agreeable to the true notion of the Law, and that they did not judge according to Law in the Caſe of *Thomas de Furnival*. But, the Barons their being anciently firſt ſo by Tenure did ſo ſtick with the Judges, that they allowed *Thomas de Furnivals* Plea, that he did not hold *per Baroniam*, to diſcharge him from being

being a Baron, though he had been Summoned as a Baron, and ſat in ſeveral Parliaments as ſuch. But of this more hereafter.

For that which now made Parliamentary Barons was, the receiving of a Writ of Summons to Parliament. Before the 49 *H.* 3. The Biſhops were of the number of thoſe that were *majores Barones*, and had Writs of Summons to Parliament among the reſt of the great men, before the making of the Law aforeſaid; and they by this new Conſtitution became Barons for them and their Succeſſors, not by Tenure any longer no more than the great Lay Barons, but by virtue of the Writ of Summons, and by the afore remember'd Conſtitution and Law made ſome time about the 49 *H.* 3.

And though the Lands of the Biſhops in the time of the Conquerour, which were put under that Tenure, be alienated or exchanged as they might have been, I am ſure if they are not, before the Statute of Queen *Elizabeth* put a reſtraint upon them, yet the Succeſſion of the Biſhops to their Baronies remains.

It is a queſtion I know, whether a Biſhop can demand his Writ to Parliament, before the reſtitution of the Temporalities, upon his Conſecration: there are valuable Opinions on both ſides; but if the reſtitution of the Temporalities muſt be firſt made, it is I conceive upon no other reaſon, than that he is not completely Biſhop before that is done, no more than a Rector is a complete Rector after Inſtitution before

fore Induction be made; though he ought (I conceive) to have his Writ upon Conſecration, becauſe upon vacancy of the See, the Guardian of the Spiritualities uſed anciently to have a Writ of Summons to Parliaments; as Dioceſans themſelves.

And now the Baronage Secular is affixed to Families, and the Spiritual Baronage to the Office and Succeſſion. And now Birth deſigns the Temporal Baron, and Conſecration of the Biſhop deſigns the Spiritual Baron; nay, ſingle Election without Confirmation or Conſecration. If elected only, they were ſummoned to Parliament by the addition of *Electi*; if confirmed and not conſecrated, then they are in the Writ of Summons ſtyled *Electi & Confirmati.* And Mr. *Selden* further tells us, that there never was any that had the Title of a Biſhop in *England*, and of the Kings Creation ſince the *Normans*, but was a Baron of Parliament; and though the Regular Barons, and ſuch of them who had Writs were diſcharged upon their Prayer, and omitted to be Summoned: Yet the Biſhops by reaſon of their Spiritual Dignity had neceſſarily a Right and Voice in Parliament. The *Archiepiſcopi*, *Comites*, *Barones*, *& alii Magnates*, in ancient Parliamentary Writs of Summons, do ordinarily expreſs and comprehend the whole Baronage, without naming the Abbots and Priors, which muſt needs be ſignified by the *alii Magnates.* Which I the rather note, becauſe the *Folio* Author, a Gentleman very eaſie and ready

ready in Inferences, doth conclude, that becauſe ſuch Writs mention *Magnates*, beſides Biſhops, *Comites & Barones*, (which he too ſuddenly concluded were comprehenſive of the whole Baronage) doth thence argue, that a Writ of Summons of any man to Parliament doth not make him a Baron; and from thence would have it inferred, that the Biſhops are not ſo, (though they are expreſly mentioned, and firſt in order, and cannot in reaſon be reduced to that meanneſs of rate and quality with thoſe that fall under an *Et cætera*;) and from hence would have it concluded, that they may, when the King pleaſeth, be diſmiſt that Houſe, becauſe there were anciently ſome Grandees that had Seſſion in Parliament now diſcharged.

Beſides we do obſerve, that another ſort of great men may be meant by the *alii Magnates*, that is to ſay, famous men of the Clergy, not Biſhops, and other men of great name for wiſdom, of which there were ſome Summoned in moſt of the ancient Parliaments, not intended thereby by the King to be made Noble, or advanced to the ſtate of Baronage; for there were diſtinct clauſes in the Writs of Summons, to ſignifie the Kings purpoſe therein. The Writs directed to ſuch as were not intended thereby to be made Barons, as the Judges, Attorney General, Kings Serjeant, &c. was, *Quod interſitis nobiſcum & cum cæteris de Concilio noſtro*; and ſometimes *nobiſcum* only, *ſuper præmiſſis tractaturi, veſtrúmque conſilium impenſuri*: whereas that to the Barons

Barons was, *Quòd interſitis cum Prælatis, Magnatibus, & Proceribus, &c.*

But, as Mr. *Selden* obſerves, that cuſtom of ſending Summons to great men (not Biſhops) to Parliament, did ceaſe after the clauſe of *Præmunientes* (by which Convocations were Summoned by Biſhops to meet with Parliaments) grew in uſe, in the Biſhops Writs of Summons to Parliament. Of which excellent Proviſion we ſhall have occaſion to ſpeak to hereafter.

All the Baronage, both Spiritual and Temporal, *de jure* ought to have Summons now to Parliament, without reſpect to Eſtate or Tenures.

There is no man now Noble by his Acres, a ſort of Nobility, that this refined Age will not allow of. The King, according to the Conſtitution of *H.* 3. afore-mentioned, may now, by Letters Pattents, or Writ, erect a new ſucceſſive Barony (as well as hereditary) as was done by *H.* 8. The fifth year of his Reign (for that the Baronage of *England* was now affixed to Family and Succeſſion, and not to Tenures) he by his Letters Pattents did then grant unto *Richard Bamham*, Abbot of *Taveſtock*, in the County of *Devon* (the Abby being of his Foundation and Patronage,) and to the Succeſſors of the ſaid Abbot, *Ut eorum quilibet qui pro tempore ibidem fuerit Abbas ſit & erit unus de Spiritualibus & Religioſis Dominis Parliamenti noſtri hæredum & Succeſſorum noſtrorum gaudend. honore, privilegio & libertatibus ejuſdem.*

This

This the King might well do, becauſe, the Abbot was of his Patronage, and the Succeſſors were therefore to be elected and collated by the King; for, that was the Inducement and Reaſon of Kings and Sovereign Princes advancing Biſhops and great Abbots to the degree of Baronage, making them Members of the great Councils of their Kingdoms and Principalities, as is before obſerved, becauſe ſuch Abbots as the Biſhops, were made always, and appointed by the Sovereign Prince.

And here we may take notice by the way, of the Reaſon, why the *Epiſcopus Soderenſis*, or, the Biſhop of the Iſle of *Man*, is not Summoned to Parliament, which I ſhall give you in the Words of Sir *H. Spelm.* in his Gloſſary, *Baronum appellatione non omnes hodie apud nos cenſentur Epiſcopi utpote Soderenſis in Inſula Mannia; quod de Rege non tenet immediate at de Comite* Darbiæ.

Nay, it is moſt obſervable, That this Honour of Baronage, or being a Member of the Houſe of Peers, was ſo inſeparable to the Office of a Biſhop, after the afore-mentioned new Conſtitution of the Baronage, That the Guardians of the Spiritualities of Biſhopricks in the times of Vacancy, and the Vicars General of Biſhops being beyond Sea, were Summoned to Parliaments by the ſame kind of Writs as the Biſhops were Summoned. Of this Mr. *Selden* doth aſſure us; *Titles of Honour*, 2 *Edit. fol.* 721. But this Honour laſted no longer than this Legal Subſtitution,

tion, and Vicarious Power. If they had Right to ſit in that Houſe, in reſpect of their Temporalities, the Guardian of the Spirituals, or the Vicars General, would not have had Writs of Summons to Parliament. But, if the Kingdom had not had a great Opinion of that Order, it would not have been ſo provided, and put in uſe. In the Vacancy of the See, or Abſence of the Biſhop, rather than that great Council would want one Biſhop utterly, or the Intereſt, Authority, and Conſent of any that had Epiſcopal Authority, they admitted the Subſtitute, by whom that Office was executed and adminiſtred for that Interval only.

When Baronies were feudal, the Perſon, tho' in reſpect of his Land, was Noble; his great Eſtate and Intereſt, and the other general Preſumptions that attend opulent Fortunes, made the Poſſeſſor Noble in his Perſon.

Anciently the Eſtate; of late, the Deſcent, in the Temporal Baronies; and the Succeſſion in the Spiritual Baronies, place the Perſons reſpectively in the *Cenſus* and Rank of Baronage; but there is no Nobility but what is Perſonal, nor can be in Nature. All the Perſons in the ſame Order of the publick *Cenſus*, are of the ſame Quality.

Neither are Biſhops to be accounted leſs Barons, or leſs Noble, becauſe they enjoy their Baronies for Life only, no more than a Tenent for Life of an hereditary feudal Barony could be ſo accounted. Feudal Baronies being conſidered

dered as Eſtates were alienable as Eſtates, and as Eſtates would ſuffer Limitations, and admit of particular Eſtates for Life. No man can ſay we had no perſonal Nobility in the time when there was no other Baronage than Feudal. How then can it be ſaid, that the Biſhops Perſons are not Noble, though they ſhould be accounted only Barons *Ratione Tenuræ*, as certainly they are not in proper ſpeaking, at this day, neither can it be objected againſt their Perſonal Nobility, that *a Biſhop may be degraded*; for, ſo may a Peer for more Reaſons than a Decay of his Fortune and Eſtate.

Which matter, I the rather inſiſt upon, for that the great Mr. *Selden* committed this Error and miſtake, that *the Perſons of Biſhops are not Noble*, by not conſidering, that the ways and means by which Perſons derive and come to be of the Order of the Nobility and Baronage can make no difference in the Baronage. But thence he offers a Reaſon (which muſt needs be a miſtake too) why Biſhops ſhall not be Tryed by Peers, in Capital Crimes (*viz.*) becauſe theſe are Perſonal; and his being a Baron is *Ratione tenuræ*, and not Perſonal Nobility. But this he wrote when he was young, in his firſt Edition of Titles of Honour, which was in the time of King *James*.

But, can there be a harſher and more incongruous thing ſaid, than that there is any other Nobility than what is Perſonal? Can Land be Noble?

This

This that I have ſaid, is to prove, That the Spiritual Lords are of the Baronage of *England*, ſuch as it is now conſtituted; and, they do not, cannot remain in any Reaſon or Underſtanding, Feudal Barons, after the *Ratio Baronagii* is changed, and if they could remain Barons *Ratione tenuræ* at this day; yet, they ought to have all Preheminencies and Priviledges of Barons.

But, true it is, that they are another ſort of Nobility, different from that of the ſecular Lords (though equal in all the powers of Baronage; and beſides, have precedency in Honour) and therefore make a diſtinct State from them, and one of the three Eſtates, or *Ordines Regni*. Beſides that, by the way, we have deſtroyed the Force of the Arguments uſed by the *Folio*, againſt the *Jus Paritatis* of Biſhops, and their Competency to try a Lay Peer, which we ſhall ſpeak to more by and by.

P CHAP.

CHAP. XIX.

IN the King, and in theſe three Eſtates, is placed the Peoples Security, and the Care of the whole Community: from every of them we have diſtinct, juſt, and reaſonable Expectations, though the third State of the Houſe of Commons, hath carried away, and almoſt ingroſſed the name of the Peoples Repreſentatives, though they are only the Peoples Repreſentatives, to act for them, in matters wherein the People are left at perfect Liberty; and concerning which, there is no Order taken in the Conſtitution of the Government.

This is truly *Our Government, a King, and Three Eſtates*, the *Lords Spiritual*, the *Lords Temporal*, and the *Commons*, by their Delegates and Repreſentatives in Parliament for the purpoſe only to treat about matters, in which, the People have Power to deliberate, and are, and ought to be redreſs'd.

This is the Form of all the Modern and *Gothick* Governments, planted in Chriſtian *Europe*. *Guntherus* expreſſeth the three Eſtates thus:

Prælati, Proceres, miſſiſque Potentibus Urbes.

The great men of Eſtates, *Proceres*, were ſufficient to take care of their Intereſts and Dependents, which made the Body of the County. But then there were Cities or great Towns, in

in which were great Bodies of Freemen, men of Wealth and Trade, that were little concerned in Lands and Tenures, which we call *Liberi Burgi*, which our Neighbours call *Haus Towns*: And our Kings ſeem to have by Prerogative a continuing Power to declare Towns, when they arrive to be great, peopled, and rich, *Free Boroughs*; and thereupon they acquire a Right to ſend Delegates to Parliament: And this appears, for that many Boroughs that ſend Burgeſſes to Parliament, have no other Foundation of Right, but the King's Charter; in which he grants, *Sit A. de Cætero liber Burgus*, I have ſeen ſome of theſe Charters as ancient as King *John*. Theſe Charters could have had no ſuch operation, but by vertue of ſome Ancient Eſtabliſhment in the Government: We have no Hiſtory of its Commencement. King *William* I. that he might have the Aſſiſtance of all the States in Parliament, put the Boroughs under Tenure by Baronage. How many of the Burgage Tenures were of that ſort, we know not; but it is probable all of thoſe Borroughs, that at that time ſent Burgeſſes to the Parliamentary Conventions by what name ſoever they were then called: the Burgeſſes of the Cinque-ports, are ſtill called Barons. And we know, That the Borrough of St. *Albans* was put under that Tenure, and in that Right challenged to ſend Burgeſſes to Parliament, as Dr. *Brady* acknowledgeth. But the reaſon why we have

no remembrance of the Tenures of Boroughs to ſend Burgeſſes to Parliament, is that which we have here proved, *viz.* the ancient reaſon of Baronage, *viz. Tenure*, did ceaſe about the time of *H.* 3. And conformably the King might require Boroughs to ſend Members to Parliament, without mentioning in his Writs the duty of their Tenure; and by declaring them free Boroughs, give them that Priviledge, though he did not oblige them thereto, by any Tenure created upon them. So that it is evident, that before *H.* 3. our great Councils, or Parliaments conſiſted of three Eſtates, though they all paſs'd under the general Stile of *Baronagium Angliæ*; which I thought fit to mention, thence to demonſtrate, that our Parliaments, or great Council of the Realm always conſiſted of three States.

Corol. From this, that the King's Prerogative being ſo, *viz.* to have power to declare Free Boroughs, which he uſeth by his Letters Patents: The Right of chooſing their Burgeſſes to Parliament belongs to all of the Community, and cannot be reſtrain'd to fewer Electors by their Charters: For *Jura ordinaria non recipiunt modum.*

Some Remainds at leaſt of this Form of Government, continue in all the Countries wherein the *German* Colonies made their Conqueſts, and planted themſelves, as will appear to any body that will conſult the Republicks, and thoſe

thoſe plentiful Quotations that have been made by a Learned Author in his Book, publiſhed ſince this was written.

I cannot but wonder, ſince this our Conſtitution hath been often moſt authentickly declared; and every one knows, that the Government is materially ſo as we have ſaid; and it is agreed by all, that the Government conſiſts of three States; that yet we know not where to find 'em.

There is much Art uſed to give Countenance to, or rather to form an Opinion that the King is one of the three States. It is now almoſt come to be an Opinion; and inſomuch as it is an Opinion, it is an Error. This Error, ſuch as it is, is endeavored to be improved to the Deſtruction of the Government. It is nurs'd up carefully, and is to gain Reputation and Credit with the People, by the Authority of great Names; and when it is grown popular, it is deſigned to take the leaſt next Advantage againſt the Spiritual Lords, to diſmiſs them from their Bench, as no neceſſary, or eſſential part of the Government.

There was, it's true, an ill-pen'd and inconſidetate Addreſs, made by the Houſe of Commons only to the King in 2 *Hen.* 4. to deſire him to make Peace between the Lords, and therein they ſay, that the three States of Parliament, are the King, the Lords Spiritual and Temporal, and the Commons: But this is the firſt

time, that an Addreſs of a Houſe of Commons was ſo nicely conſidered: And that the Form and Letter of it ſhould be the meaſure of Law and of the Government. There was alſo a phantaſtick Letter written by *Stephen Gardiner*, Printed it ſeems in the *Book* of *Martyrs*, wherein that *Biſhop* talks of three States, in which we muſt needs reckon the King for one: For he could not leave him out of the Government; and he had no more Chriſtian Graces than Faith, Hope, and Charity, which he attributes to this Ternary of States of his own making. *But* if there had been four of thoſe Graces, there had been four States, if ſix of thoſe Graces, to have match'd them in number, he would have found three States in the Houſe of Commons, *viz.* Knights, Citizens, and *Burgeſſes*, and have made ſix States.

It ſeems too, King *James* made a Speech in Parliament, wherein, he was pleaſed to uſe his Logick; and liked, it ſeems, the *Ramiſtical* way of *Dichotomies*. The truth is, he had more Logick than a wiſe King could tell how to beſtow. For in that Speech, he ſaith, The Parliament is Compoſed of a Head and a *Body*, Himſelf and the Parliament. This *Body* is ſub-divided into two Parts, the upper Houſe, and the lower Houſe. The upper Houſe into two, Lords Spiritual and Temporal; the lower Houſe into two, Knights and *Burgeſſes*. The Citizens were left out for the ſake of his *Dichotomy*. His Method

thod was to proceed by the way of Two's; and therefore 'twas impoſſible we ſhould hear in this Speech of any three whatſoever; yet this Speech too, is produced againſt three States diſtinct from the King.

Beſides, they tell us, that in one of the late King's Declarations, drawn by (then) a young Gentleman, but of great hopes, and afterwards a very great Man; the King is called one of the three States. This Gentleman was very probably miſled into that Miſtake, by a Book called *Nomotechnia*; wherein it is ſaid, that the King, Lords and Commons are the three States: a Book of Inſtitutions for young Students, which was never yet allowed for Authority in the Law; nor ever had the Honour to be cited in our Courts of *Weſtminſter*.

Theſe Miſtakes or whatever you will call them, with the Authority of the *Octavo* Author, are united together to form an Opinion, That the King is, but the *Biſhops* are not, one of the three States, which will be a very diſhonourable Errour: For that it will lead us into a Miſtake of our Government, and (which is much worſe) for that it hath a tendency to ſubvert it (that is) to depreſs the King, and to ſuppreſs the *Biſhops*.

It is an Indign thing, and not to be ſuffer'd, that we ſhould loſe our Government by Surreption, and be made a *Babel*, by dividing and confounding our Language. To prevent this

miſchief, we have declared our Government, from the very Reaſon and Nature of the Structure thereof, to conſiſt of three States, that is, three different Orders, which make the Great Council of the Kingdom; whoſe End and Buſineſs, is, to adminiſter Council and Auxiliaries to the King, who is intruſted with the executive Power of the Government and Laws.

And now we will produce great Authorities, to put this Miſtake out of Countenance, and to prevent its gaining any farther Authority with the People. For Errors of this nature, in proceſs of time, turn into Truth, and things prove to be ſo at laſt, as the Error and Miſtake firſt beſpake them; and this our Lawyers know well enough, with whom 'tis a *Maxime* (it belongs only to them, and matters within their Province) *Communis Error facit Jus.*

And firſt, for this purpoſe, we will mention the Stile that the Parliament uſed, which was convened by the Authority of *Richard* the Second, he being then about to relinquiſh the Crown to *H.* 4. This Parliament, in tranſacting ſo weighty an Office, had reaſon to conſider and know who they themſelves were. They, without doubt, in all their Proceedings in this High Matter, uſed their true, as well as biggeſt Stile, which was that of *States*. *Walſingham* tells us, *Sede Regali tunc vacua Procuratores Regis* Richardi, *Archiepiſcop. Eborac. & Hereford. Renunciationem dicti Regis & ceſſionem omnibus ſta-*

tibus

tibus Regni tunc adunatis ibi publice declararunt. And again, *Quoniam videbatur cunctis Regni ſtatibus ſuper dictis Articulis ſingulatim, ac etiam communiter interrogatis.* And again, *Ordinati ſunt Commiſſarii ex parte ſtatuum & Communitatis ejuſdem Regni.* Obſerve here, that the King is none of theſe States; that they are called all the States, which ſignifies more than two; that there is mention of States, beſides Community; and therefore, it was then underſtood, that there were two States in the Lords Houſe.

But afterwards he recites us the Form of a moſt important Inſtrument, which follows, *In Dei nomine, Amen, Nos,* I. *Epiſc. Aſſavenſis,* I. *Abbas Glaſconienſis, Thomas Comes Gloceſtriæ, Thomas Dominus de Berkley, Tho. de Epingham, Tho. Gray Miles, Willielmus Thirning Juſticiarius, per Pares & Proceres Regni Angliæ Spirituales & Temporales & ejuſdem Regni Communitates, omnes ſtatus ejuſdem Regni Repreſentantes Commiſſarii, ad infra ſcripta ſpecialiter deputati, &c.* By which it is moſt clear, that the Government was then underſtood to conſiſt of three *States*, of which the King was none, as he could not be with any Congruity in this Caſe.

1 *R.* 3. *Rot. Parl. apud Weſtm. die Veneris* 23 *Jan.* it appears, that a Bill was exhibited *coram Dom. Rege in Parl.* Wherein is contained, *That ſeveral Articles on the behalf, and in the name of the three States of the Realm,* viz. *Lords Spiritual, Temporal, and Commons, were delivered*

to

to the King. And farther, that the ſaid three Eſtates were not aſſembled in form of Parliaments; therefore be it ordained by this preſent Parliament, that the Tenor of the ſaid Articles delivered as aforeſaid, on the behalf of the ſaid three Eſtates out of Parliament, *&c.* Now by the three Eſtates aſſembled in this preſent Parliament, be the ſame ratified and approved, *Ac idem Dominus Rex de aſſenſu dictorum trium ſtatuum Regni & Authoritate prædicta, omnia & ſingula præmiſſa, in billa prædicta contenta concedit, & ea pro vero & indubio pronunciat, decernit, ac delarat.* This was in like manner an Act of Parliament, for declaring the Right of the Crown to be in *Rich.* 3.

In the Statute made 2 *H.* 4. the Word *State* is uſed plurally, and for more than two, of which the King was none, to ſignifie the Parliament, as appears *cap.* 15. And ſo it is alſo in 4 *Hen.* 4. *cap.* 4. in which theſe words are, *Sith it is the deſire of all the States of the Realm, that nothing ſhall be ſo demanded of our Sovereign the King. He will that all thoſe who make any Demand,* &c. So that hereby it is evident, that in the Underſtanding of that time, there were three States beſides the King. But to ſpare the Reader the trouble of the mentioning the Records at large, that teſtifie the Parliament to conſiſt of the King and the three Eſtates, *viz.* Lords Spiritual, Lords Temporal, and Commons, I will refer them that doubt to the Col-

Collection made in Mr. *Pryn's Index* to Sir *Robert Cotton's* Abridgment, under that Title (who himſelf was of this Opinion, which nothing but the Evidence of the truth of the thing could have form'd:) His great Knowledge in Records; and that he is known, not to be partial for the Biſhops, make him of great Authority, *pages* 10, 11, 12, 13, 14, 17, 329, 384, 325, 281, 392, 567, 607, 710, 712, 713, 714.

And farther, in the Time of Queen *Elizabeth*, in an Act of Parliament, in the firſt Year of her Reign, made for the Recognition of Her Queen of *England*; which was an Act of State, and of the whole Community; and therefore moſt requiſite it was, that that Parliament ſhould give themſelves their right Stile. It is ſaid, *We your ſaid* (the Lords Spiritual, Temporal, and Commons in Parliament aſſembled, was ſaid before, to which this doth relate) *moſt loving Subjects, repreſenting the three States of your Realm of* England.

The Nature of the Government came directly at thoſe Times, under Conſideration of Parliament, which is an Aſſembly that cannot be miſtaken in the Conſtitution of the Kingdom in a Queſtion of ſuch a Nature, wherein they are obliged to deliberate and conſider. This mighty Affair required them to conſider who they were, and what was their Conſtitution. Now (if at any time) they are to uſe that Stile, that denotes their Power, and declares the

Govern-

Government. The Stile of the three *Eſtates* of the Realm, it ſeems, is too ſacred and great, and not for ordinary uſe, but for that it is uſed upon ſuch occaſions as the Recognition of Sovereign Princes, and in declaring Kings. This Stile is therefore moſt certainly declarative of the true Conſtitution. The great Stile and Title of the Lords Spiritual, Lords Temporal, and Commons of *England* in Parliament. A *Miſnoſmer* now would be as great a Soleciſm, as to ſee the Nobles and Prelates without their Robes, and proper Cognizances, at the Solemnities of a Coronation.

By the due comparing the Statutes aforemention'd, wherein the Lords Spiritual, and Temporal, and Commons, are called the States, and alſo the Repreſentatives of all the Eſtates of the Kingdom. We may be enlightened into a great Myſtery of State; for that the Lords Spiritual, and the Lords Temporal, and Commons, are called the three States; and alſo the Repreſentatives of the States. It gives us to underſtand, that every one of them is entruſted for the other and with the Conſervancy of the whole Community, and are all in their proper Miniſtries deſigned to the Common Good; each of them have Dependencies and Expectancies from the other, in the due Diſcharge of their proper and diſtinct Offices. And every of them therefore Repreſentatives of the other. That the Lords Spiritual, and the Lords Temporal, are reſpectively Repreſentatives and Truſtees for

for the Peoples Good, and the Common-weal, as well as their own. In like manner, as every Parliament man, for a particular Borough, is a Repreſentative of all the Commons of *England*.

To which we will adjoyn another great Authority, and that is of Sir *Edward Coke*, 4 *Inſt. fol.* 2. who tells us, that the King and three Eſtates, *viz.* Lords Spiritual, and Lords Temporal, and Commons, are the great Corporation and Body Politick of this Nation. This was the Opinion of his Old Age, when he was moſt improved in Knowledge; and when he did not flatter the Prerogative.

Beſides, to clear this point, we may obſerve, that the Stile of Acts of Parliament, that hath moſtly obtained, is this, *viz. Be it enacted*, &c. *and by, and with the Advice and Conſent of the Lords Spiritual, and Lords Temporal, and Commons.* This diſtinct mention of the Lords Spiritual and Temporal, is a Cognizance of their being diſtinct *States*: For obſerve, there is no particular mention of Knights, Citizens, and Burgeſſes, in Acts of Parliament; becauſe they are all of the Commonalty, which is but one State. They are all involved under the general Name of Commons: And ſo would certainly the Lords, both Spiritual, and Temporal have been in the general Name of Lords, if they had not been diſtinct States, and ſo accounted. The Stile of Acts of Parliament, would have

have been by the Advice and Aſſent of the Lords and Commons aſſembled in Parliament: And the ancient Stile of Parliament, before the Houſe of Commons was divided and conſtituted apart from the Lords Houſe, was *Clerus & Populus*, *Clerus & Magnates*; as may be ſeen by *Eadmerus*, and *Matth. Paris*, and the Writers of thoſe Times: So that the *Clerus*, or Biſhops, were always a diſtinct State in Parliament.

For the letting in Light upon all that hath been ſaid in this matter; and for farther clearing it, and to reconcile the Differences in the Stiles of the Parliament; and that they may unite in their Evidence, and not ſeem to thwart one another: It muſt be remembred, that that which is moſt expreſs and particular, is moſt ſcientifical, and more exactly inſtructive, moſt diſtinct and true; and intends to inform us exactly in the very Nature of the thing; and therefore cannot be derogated from, nor prejudiced by what is more general, or leſs diſtinct.

It is hence therefore evident, that the Lords Spiritual and Temporal, are taken for diſtinct States, as they are: For they have their diſtinct Intereſts, and for ſeveral ends and purpoſes became parts in the Government. They have their ſeveral Miniſtries and Advantages to the Government apart, and come into that Houſe, by ſeveral ways of Deſignation and Appointment. The Prelates care, beſides that which is common between them and the Temporal Lords,

is

is that of Religion, and the Affairs of the Church, and the whole Order Eccleſiaſtical, by which the People are to be miniſtred to in their higheſt Concernments; which are Reaſons very ſufficient to reckon and account them a diſtinct State.

And now we have aſſerted to the Prelates a *Jus Paritatis* in the Houſe of Lords, for that they are complete Barons, as we have likewiſe proved them a diſtinct State.

The Baronage of *England* is the Houſe of Lords. Additions of Title give Precedency, but no Superiority or addition of Power. The Baronage is one Order and Rank, and the higheſt in the *Genſus* of the Government. Tho' the manner of the Promotion, and the Ends and Intereſts of the Government in the advancement, of the Biſhops, are ſeveral from thoſe that advanced the Temporals Lords to their State and Honour; yet to the ſame degree they are promoted. They are both Members, of the ſame great Council, of the ſame great Judicature; and by their long continuance ſo are moſt duely ſtyled *Pares Regni.* And tho' the Biſhops are conſidered as to their Order and Office Eccleſiaſtical, and that other care belonging to it incumbent upon them, beſides that which belongs to the Lay Baronage; yet the Order that belongs to the conſideration of the Heralds, doth ſignifie that the Office of a Biſhop doth not leſſen the Dignity of their Peerage.

What

What is it then that makes this preſent Queſtion? The Biſhops have the reaſon and nature of the Government of their ſide, they have uſed ſuch a power when they have pleaſed, it was never denied to them, and their right hath had the moſt ſolemn Recognition that can be made.

The Canon could not abridge and reſtrain their right, and their true Character qualifies them not only to the degree of an unexceptionable Judge, but renders them moſt fit and deſirable. For beſides their Wiſdom and Juſtice, common with that of the Temporal Lords, they are intended of the greateſt tenderneſs and compaſſion, and muſt be ſo if they comport themſelves with agreeableneſs to their Character and Function.

They are not ordinarily engaged in the Factions of the Temporal Grandees, and Religion being their buſineſs, they are more under the powers of it; that being their glory and their firſt greatneſs, that which promoted them to their Secular Honour and Dignity, and that which muſt ſupport it. Their Intereſt is Religion, and therefore they are the more obliged in all their outward acts to comport with it. They, out of an univerſal charity, underſtand, that it is mercy and compaſſion to the innocent to puniſh the nocent perſon; and yet they can, in the adminiſtration of punitive Juſtice, attemper the ſeverities of Laws with the mercies of Religion, and uſe Compaſſion to the Criminal when they

Paging wrong from here

they do not depart from the unrelenting Rules of Law, out of regard to the publick peace. And by ſuch demeanour they may reconcile the Office of a Judge with that of a Prieſt, which ſome have thought incompatible. Πολιτικὴν ἀρετὴν ἱερωσύνῃ συνάπτειν τὸ κλῴδειν ἔστιν ἀσύγκλωστα. *Syneſ.* But they are no more inconſiſtent than Power and Authority, which united makes a moſt venerable Magiſtrate, and gives him the greateſt advantage of ſerving the Community.

——*Peragit tranquilla poteſtas*
Quod violenta nequit; mandataque fortiùs urget
Imperioſa quies. ——

CHAP. XX.

AND ſuch a Judge would I chuſe; but we muſt take ſuch Judges as the Law appoints. *Magna Charta* is objected againſt the Biſhops right in queſtion, which ſaith, that *Nullus liber homo capiatur, &c. nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per judicium Parium ſuorum.* The Objector omitted to add or conſider what follows, *viz. Aut per legem terræ.*

But the Statute of *Magna Charta* is no Literal Law, as every body knows; but intending to confirm the Common Law, it is upon the matter *Lex non ſcripta*; it alters nothing that was the

Common Law before, but that being found out, declares what *Magna Charta* eſtabliſheth. And therefore Peers ſhall be tried by Commoners in Appeals, notwithſtanding the Letter of *Magna Charta:* for otherwiſe Peers might not be tried at all, and no Juſtice done in Appeals, which is the Suit of the Party, and not of the King. Privilege muſt be always ſet aſide, rather than a faileur of Juſtice ſhould be omitted. So that the Law before *Magna Charta* and ſince, whatſoever it is, muſt determine this matter.

The Proviſions that the Law hath made, that the Nobles and the Commonalty ſhall not intermeddle to judge any perſons not of their Order, is a moſt prudent Eſtabliſhment, without which neither Order, Juſtice, or Peace could be preſerved. The Envy of the Commons would render them unfit Judges of the Peers; and the Animoſities of the Peers would render them unapt to ſit in Judgment upon a deſpiſed Commoner.

Beſides that, otherwiſe, the Dignity of the Order of Peers would ſuffer: for the Superiour can no more be judged with any congruity, than bleſſed, by the Inferiour. This is a reaſon big and wiſe enough to be aſſigned, and worthy of a wiſe Government and Polity. And to this reaſon the words of the Statute of 25 *E.* 3. *cap.* 2. *de Proditoribus,* do point, *De ceo ſoit probablement attaint de overt fait per gens de lour condition.*

And

And therefore it ſeems to me, that, according to the Reaſon and Deſign of the Law, which declares the Law in particular Caſes, (Biſhops being Barons, and of the Peerage of *England*, and of that Rank and Order) they ought to be tryed by thoſe of their own Condition: And the denial to them of this Priviledge, which is annex'd to, and is a reſultance from the Dignity of their Order, is a departure from *Magna Charta*, and not agreeable to the Proviſion of the 25 *E.* 3. *c.* 2.

But it was never an allowable Exception to a Judge, that the Judge hath not ſo good an Eſtate, or other Advantages of Fortune equal to the man he Judges, to forfeit, in caſe the Judge be a Capital Offender; upon which reaſon, the *Folio Gentleman* grounds his Reaſonings againſt the Biſhops being Tryers of Peers. He argues the Biſhops incompetent to try a temporal Baron upon this reaſon, Becauſe the Biſhop hath onely a Peerage for his Life to forfeit.

But who can be ſatisfied with ſuch fine and ſlender Reaſoning, or entertain an Opinion that is not better grounded?

I would not be thought to argue or maintain, that Prelates are ſo fit to be appointed by the King's Commiſſion to try a Temporal Peer, in the Court of a Lord High Steward, out of Parliament: when a ſelect Number of Peers are to be appointed for Tryal, it is moſt convenient, that thoſe of the ſame Species of the Baronage

ſhould be choſen for that purpoſe, for many reaſons: but for a Tryal of a Temporal Peer in Parliament, which is the Eſtabliſhment and Appointment of the Government, and not of the King's ſpecial Deſignation (notwithſtanding the reaſon of the *Folio*) for Reaſons herein alleadged, a Biſhop is a moſt fit, legal, and competent Judge.

But I have taken too much notice already of the Errors and Miſtakes of the *Folio*, and his falſe Reaſonings; I am weary of ſuch Animadverſions: I ſhall proceed now to the end of my Diſcourſe, without making any more Reflections.

It is already cleared, that the Biſhops are compleat Barons, that they are of the State of the Baronage; and it can have no Conſideration how they came by it, nor how they held it: for the *Modus tenendi* doth not alter or diverſifie the Honour.

And for my part, I cannot find reaſon to believe, but that the Biſhops had, or might have had originally their Tryal by Peers; and that it was their Right, in Conſequence of their being placed in that Order and State (beſides that they have a Precedency to the Temporal Baronage) to be tryed by the Baronage, becauſe the Law, for the reaſon afore-mentioned, appoints Tryals *per Pares*. But the contrary practice is the Strength of our Adverſaries in oppoſing the Peerage of Biſhops, which we ſhall therefore now conſider of.

It

It is certain, that in all Tryals wherein Biſhops are concerned, whether Plaintiffs, or Defendants, in Actions real, as well as perſonal, whether the Lands of the Church are concerned or not, a Knight is to be returned upon the Jury that is to try the Iſſue. I will not trouble the Reader with Law-Caſes; any Gentleman that pleaſeth, may examine the Truth of what I ſay.

This priviledge therefore cannot be in reſpect of the Lands of the Biſhoprick (as the *Folio* would have it) but of the perſons of the Biſhops, a reſpect to the Order and Peerage of the Biſhops.

It is the ſame Priviledge, and as large as the Temporal Peers enjoy in this matter; (which is,) that the worthieſt and beſt of the Commoners, which are Knights, ſhould be impannelled upon a Jury, where either a Spiritual or Temporal Baron is concern'd: beſides that I find a ſingle Remembrance as high as 13 *E.* 3. in *Brooks* Tryal 142. (the Reports of that year are not printed) of the Biſhops Right of Peerage in a Capital Cauſe: The Book is *Eveſque eſt Pere de Realme, & ſerra try per Peres in Crime.*

But how this Right came to be diſcontinued, and to loſe remembrance, we ſhall preſently account for: but I cannot think it Sence, which ſome of our Lawyers have ſaid for this purpoſe, that a Biſhop his being a Baron is *Ratione Tenuræ*, and not perſonal; which is all one as to

ſay, that the Biſhop is a Baron, but his Perſon is not a Baron; but his Peerage and Baronage is no other in truth, than an Honour accumulated upon the Perſon of a Biſhop together with his Office.

But to excuſe them, they thought themſelves obliged to give a reaſon why Biſhops are not (as the Law is taken) to be tryed by Peers, but by a Common Jury; which grew into practice by accident, and was not ever ſo in probability; but certainly is very irregular, and extream incongruous; and therefore to give a good reaſon for it, is too hard a task to be undertaken. He that will undertake to give a reaſon of that which is unreaſonable, and go about to prove a thing fit which is incongruous, muſt likely ſpeak things equally incongruous, abſurd and unreaſonable.

But to ſpeak what the truth is in this matter, the Biſhops and the whole Order of Clergy did challenge to be exempt from the Juriſdiction of Secular Courts; but the Biſhops, as is objected, never waved their *jus Paritatis*, upon Arraignment in Inferiour Courts. They onely never inſiſted upon it: For they had a better way to eſcape Juſtice, (*viz.*) by ſetting up the pretended Rights and Priviledges of their Order and that Church, for exempting themſelves from the Juriſdiction of the Temporal Courts; and by this means, they did eſcape unpuniſhed for the moſt part.

Though

Though there were ſeveral Abatements made by the Proviſion of the Laws, and the Wiſdom of the Judges, to their unreaſonable pretences therein; yet they always got off by their pretended Priviledge, if not with impunity, yet with ſome protection at leaſt from Juſtice: and farther, they thought perhaps they might at leaſt by this means avoid being thought guilty of the Crimes objected, whilſt they uſed this pretence for a reaſon why they would not make a Defence.

And ſure in all Offences but Treaſon they eſcaped with their Lives, before the Statutes that took away the benefit of Clergy in ſome Caſes of the greateſt Guilt; and even in the Caſe of Treaſon, the Criminal ever had the Advocation and Interceſſion of the Church-power and Intereſt, becauſe the priviledge they contended for, was ſo great and valuable a Concernment (as they eſteem'd it) to the Order of the Clergy.

But by this means, the memory of the Uſe of this Right and Priviledge was loſt, and the Deteſtation of a Crime in a Prelate, provided him a ſpeedy and ready juſtice, ſuch as was at hand; and at length, Biſhops themſelves, unadviſedly, and being born down by the Common Opinion thus grounded and occaſioned, did ſubmit to Tryals by Juries.

It is enough to have given an account, how this Anomalous piece of Law came about. But Anomalous Caſes never make Rules, nor deſtroy

any. Nor is it to be drawn into conſequence, whatever is a departure from the Eſtabliſhment, to deſtroy it quite. Poſitive Conſtitutions, of which no Reaſons can be given why they are ſo, can infer or argue nothing. Reaſon cannot make Law, though it is a fair inducement: but our Reaſon is moſt perverſly imployed, when it proceeds from ſome Irregularities that happen in Humane Affairs, and are ſhuffled upon us by length of time, by violence and iniquity, and a heap of Accidents, to argue us into more, and to refix that which is regular, and remains firm. *In quo quis peccat, in eo punietur.* Is it not enough, that the Order now ſuffers a diminution of their dignity, by reaſon of the contumacy of the Popiſh Prelates their Predeceſſors; and that their Refuſals to ſubmit to Temporal Juſtice are viſited upon the Succeſſion? Severe enough this is in it ſelf.

But why ſhould any man expect, that this Age in conſequence of this, ſhould be perſuaded and reaſoned to exclude the Biſhops out of their remaining right? 'Tis no more to be expected, than that a man that hath one hand withered and mortified with the Palſie, ſhould be perſuaded to cut off the other for conformity.

We know how the Prelates fell from their primitive Dignity of being tried by thoſe of their own Order, and were ſubmitted to be tried by Juries of Commoners. It would be therefore conſonant and agreeable to the Dignity of Ba-

rons,

rons, and Lords of Parliament, (for ſuch the Biſhops are) that they be reſtored to their ancient right in the matters of Trials, as miſtaken Law is rectified by an Act of Parliament. A wiſe Act of State it would be, to redintegrate the Honour of the Baronage of *England*; the whole Baronage ſuffering diſhonour, by a mutilation of ſo Honourable a Priviledge in one of the *membra dividentia* of that body, whilſt the Biſhops are thrown to common Jurors. Eſpecially ſince the incongruity thereof hath given occaſion to ſome men, to queſtion another of the *Jura Paritatis*, which belongs to the Prelates, and to diſpute their right of Seſſion in that Houſe, in one of the moſt important Concerns of the Government.

But however this Irregularity is diſcourſed, it doth not affect the Right of the Prelates now in diſpute: for though Biſhops are tried by Commoners *out of Parliament*, as the Law is now generally taken; yet that they are to be tried by *Peers in Parliament*, our Adverſaries do not deny. And that they may and ought to ſit in judgement upon Temporal Lords in Parliament in Capital Cauſes, we have clearly proved. So that the Reciprocal of a Biſhops being judged and judging in Capital Cauſes in Parliament is intire, and in this they continue duly *Pares*.

But that it may not depend upon our Adverſaries Conceſſions, that Biſhops may be tried by Peers in Parliament; for he is not always conſtant

ſtant to himſelf, and may take back what he hath yielded; we ſhall here ſubjoyn a ſhort demonſtrative proof, that the Biſhops ought to be tried by Peers in Parliament: And that they have been declared and taken for Peers, and under that Character tried; when if they had not been reckoned and deemed Peers, they could not have received Tryal in Parliament. And it is thus:

Edward the Third had prevailed with the Lords againſt their good-will to condemn the Earl of *March*, Sir *Simon Beresford*, *John Matrevers*, *Boys de Boyons*, *John Devard*, *Thomas de Gowrney*, *William Ogle*, for the Murder of *Edward* the Second his Father, and the Earl of *Kent*; all of them Commoners but the Earl of *March*. The Lords were afterwards ſenſible of the Injuſtice and Irregularity of their Proceedings, in judging and condemning Commoners; and for the avoiding of the like for time to come, an Act of Parliament was made, which followeth: *viz. El eſt aſſenſu & accord per noſtre Seigniour le Roy, & touts les gents en plein Parlement, per tant que les dits Peres come Judges du Parlement priſterint en le preſence noſtre Seigniour le Roy, a faire & a render les dits judgments paſſant du Roy ſur aſcun de ceux que n'eſtoient pas leur Peres & ce que encheſon de murdre de Seignior Lige, & deſtruction de celuy que fu ſt pres de Sank Royal, & ſits du Roy, que per les dits Peres, que ore ſont ou les Peres que ſerront en temps aveniz ne ſoient,*

mes

mes tenus ne charge a rendre judgments ſur auter que ſur lour Peres ne a ce fair mes eiont les Peres de la terre poer eins de ceo pur tout Jours ore venu ſoient diſcharges & quietes, & qui les avant dits judgments ore rendus, ne ſoient enſample nen ſequence en temps avenir per quoi les dits Peres puiſſent eſtre charges deſore judger autres que lour Peres contre la ley de la terre ſi autiel caſe deveigne, que Dieu defend. Rot. Parl. 4 E. 3. 11. 6.

This the Author of the grand Queſtion concerning the Judicature of the Houſe of Peers, would have but an Order of the Houſe, and no Act of Parliament, becauſe it ſerved his purpoſe to have it ſo; but for no other reaſon which he offers in that Book: but that it was an Act of Parliament, will appear by a Record which my worthy Friend Mr. *Petyt*, a moſt Induſtrious and Sagacious Enquirer into the Records of Elder Times, hath furniſhed to me, which is a Writ directed to the Barons of the Exchequer, wherein the afore-recited Record is mentioned, and called an Act of Parliament, *viz. Rex Theſ. & Baronibus ſuis de Scaccariis ſalutem; mittimus nobis ſub pede ſigilli noſtri quædam Judica in Parliamento noſtro apud Weſtm. nuper tent. per Comites, Barones, & alios Pares Regni, ſuper* Rogero *de Mortuo Mari, & quoſdam alios reddita, necnon quondam Concordiam per nos & Pares prædict', necnon Communitatem Regni noſtri in eodem Parl. fact' ſuper premiſſis, mandamus quod Judicia & Concordiam predict', in Scaccario noſtro predict'*

coram

coram vobis legi & publicari, & ibid. ſeriatim, in-rotulari, & de cætero ibid. obſervari fac'. Teſte meipſo apud Windſor, 15. *die* Februarii, *Anno Regni noſtri quinti, adhuc Brevia directa Baronibus de termino Sancti Hilar. Anno* 5 *E.* 3. *R.* 33, *penes Rememor Domini Regis in Scaccario.*

To compleat our Argument, the *Concordia* appears now an Act of Parliament to the purpoſe, that the Lords ſhould not give Judgment upon others than their Peers; yet we find the Biſhops afterwards judged in Parliament, and that in times near the making of this Act, when we may be allowed to preſume they knew this Law, (and beſides, the practice hath been conformable to the Law, ſince, as our Adverſary confeſſeth) and particularly, to mention no more, the Biſhop of *Norwich*, in the 7 *R.* 2. and *Thomas Arundel*, Arch-biſhop of *Canterbury*, 21 *R.* 2. both for Treaſon, were tryed in Parliament, by Peers; which Caſes are before-mentioned to another purpoſe.

There was likewiſe an Act of Parliament, made 13 *E.* 3. *n.* 7. that the Nobles of the Land ſhould not be put to anſwer, but in open Parliament, by their Peers; but two years after, that Act was repealed; otherwiſe we ſhould not have ſince heard of Tryals of Biſhops by common Juries in Capital Cauſes. And when the Lay-peers can again procure and provide for themſelves ſuch a Law, they will not, I hope, envy the Biſhops, if they find them therein included.

CHAP.

CHAP. XXI.

BUt after all that hath been ſaid, it will be yet neceſſary to advertiſe the Reader, for informing and ſetling a true Judgment of the Right of the Cauſe, That in Queſtions of this Nature, we can onely arrive to a moral Certainty, which is made by incomparably the greateſt probability. That we cannot be anſwered, but by producing ſomething, at leaſt, equally probable to all the ſeveral parts of our Diſcourſe that are to the queſtion. If by any Objection they ſhould render any one part of our Diſcourſe doubtful, they would do nothing, except they can do ſo to all the reſt; which can be done onely by offering ſomething more probable. For when many probabilities are concurring to prove the ſame thing, they do not ſingly ſtand upon their own Credit; but they are all aſſiſted by their Conjunction, and give Aids mutually to ſupport every one ſingle probability. This is but neceſſary to be ſaid, for that I ſee this Queſtion will be kept up and defended, with Obſtinacy, Paſſion, Intereſt, and unreaſonable Contention.

And farther, that it is very undecent, that a queſtion of this Greatneſs, concerning a matter grave and important, ſhould be endleſly vexed

vexed with trifling Objections of the *Nequam ingenioſi*. To prevent therefore the Caprice, Captious Cavillations, trifling Criticiſms, forcing of a Grammatical Sence of Words againſt their true and eaſie meaning, (a meaning moſt agreeable to the ſubject matter, and to the occaſion of ſpeaking of them,) and againſt their probable intendment, and contrary to the underſtanding of the Times when they were ſpoken. And that we may be no longer or more troubled with their Oppoſings to that which is fairly probable, an imagination of ſomething barely poſſible, and which otherwiſe doth appear notoriouſly falſe. That Objections neither from the looſe Stile, eſpecially of partial Hiſtorians, nor from Records of Matters dark and obſcure, which leave us in doubt of their true meaning, and therefore can be no ground for Argument; nor from the various ſence of words, which they make to ſtand for this or that, as it ſerves their turn: At which rate nothing will be certain, becauſe few words have one ſingle determinate Sence, May any longer continue the Subterfuge of a deſperate Cauſe, and matter of endleſs Diſpute. I appeal to the World, whether ſuch like Objections deſerve an Anſwer, (for to ſome of theſe Topicks, whatever ſhall be produced by our Adverſaries will be reduced:) And whether they are not rude and injurious to the Dignity of the Right in queſtion, to draw it to a Tryal by ſuch mean and incompetent ways, and unjuſt meaſures,

ſures, as they are otherwiſe in the Management of this Queſtion, to the perſons of thoſe that are concerned in it.

It is with paſſion to be reſented, that ſo noble a Queſtion ſhould be tryed by ſuch mean and incompetent ways of Probation, and by ſuch unnatural meaſures, which can be endured by none but ſuch, which have no meaſures of Right, but an agreeableneſs to their own Projects; and who are upon the ſearch of Colours and Pretences, to change and alter our Government, or hurt it in a Vital part, and begin with the Biſhops, to take down our Government.

CHAP. XXII.

I Have farther this juſt Caution to add, for the warding off ſome other undue prejudices in the Conſideration of this queſtion, that our Government did not continue the ſame after and before the Conqueſt; and that the Government upon the Conqueſt, hath received ſince many beneficial Alterations. That the Biſhops Right muſt be conſidered in Analogy to thoſe ſeveral Alterations; and in conſequence, they ought not to be conſidered as Barons by Tenure, when Tenure ceaſed to be the reaſon of Baronage. The contrary whereof I find inſiſted upon, and made the reaſon why Biſhops

muſt

muſt not be tried by Peers. And the ſame reaſon will ſerve to eject them out of the Houſe at the Kings pleaſure; becauſe forſooth ſeveral Barons by Tenure have been omitted in Summons to Parliament, and no Lay Baron now (they ſay) is ſummoned upon that ſcore, but for that he is a Baron by Writ or by Patent, which makes a permanent Nobility in their Families.

But that which is now our Government, in what it differs from what it was anciently, as it is not leſs rightfully our Government becauſe it was not ever ſuch, ſo it deſerves our greateſt zeal to defend it, becauſe it is much better.

Governments are (I am ſure ours is) ἔυρημα βίου καὶ χρόνου, form'd and faſhioned, and refined by long experience: they are not perfected as ſoon as made; they have their Infant-ſtate, as well as Men. The elder and firſt times are the Childhood of Government, and of the World; *Antiquitas ſeculi juventas mundi.* It is egregious folly in any man, to attempt to reduce us back again to the rudeneſs of the firſt Ages, and to all the inconveniences that have been diſcharged and filed off inſenſibly by Experience and Wiſdom, the daughters of Time, in a long ſeries of Ages. We neither eat, drink, nor cloath our ſelves, nor build after the manner of our Anceſtours, but according to our improved Inventions.

Unde datæ populis fruges & glande relictâ?
Ceſſerat inventis Dodonia quercus Ariſtis.
Claud. *de raptu Proſerpinæ.*

It

It is time ill ſpent by ſome of the Antiquaries, to go about to refix the preſent eſtabliſhed Government, by endeavouring to find out the Records wherein it appears to have been other, of which we have ſome publiſhed, and are threatned with more. But they will have no other effect (I hope) than to provoke us to give God thanks for the wiſdom of our Forefathers, that they have left us a Government much better than what they found, more juſt and peaceable, and better eſtabliſhed for a laſting continuance: Though they perverſly deſign it as an Artifice to overturn the State, and to evacuate our moſt refined and wiſeſt Conſtitutions. For that they can find ſomething before them, they would note them to want Authority and Juſtice. We ought (ſay they) to have recourſe to the primitive Laws of the State, which have been aboliſhed by unjuſt Cuſtoms and Uſurpations. This is a Game at which we are ſure to loſe all; nothing will be found juſt in this Balance. And by theſe means ſome baſe Factors for Slavery are contriving the ruine of our Liberty: but this they will effect when they ſhall have perſwaded us to ſuffer again all the incommodities and coarſneſſes of Life which our Anceſtors ſuffered, becauſe they were no better inſtructed:

Frugibus inventis ad glandes velle reverti.

The great change that was made in the Baronage of *England* which we have obſerved, was remedial and healthful. Its Goodneſs doth

appear by the thorough Cure it made of our Diſorders: for we have not ſince relaps'd into theſe Evils, from which we recovered by that Change. It was Legal, and with full conſent of the whole Community: For it was introduced without Noiſe, without Oppoſition or Diſpute; nay, without Obſervation: So that we hear not how it was done, but only perceive the Change. Theſe are ſure Signs, that we arrived by this Change, where our Government did at firſt deſign us; and that we were agreeable in this Alteration, to its firſt Intentions. That all Parties herein received their Satisfactions, and found their Intereſt; that no body was aggrieved at it, neither did it raiſe Wonder in any man; it was every man's Deſire and eaſie expectation. Which I believe are the true Reaſons why this Change is not more remark'd in our Hiſtories. But pity it is, that through the injury of Time, and (what is reaſonably ſuſpected) the iniquity of Corrupt Miniſters, that we want our Records of that time, which could not have fail'd telling us the whole Secret, by what Means, the Inducements thereto, the Methods whereby, and the exact time when we made our Alterations in our Government, materially and in its eſſential parts always the ſame.

Of this our Records, if they had been preſerved to us intire, would have inform'd us; but alas, we have but a few Remains of them.

Apparent

Apparent rari nantes in gurgite vaſto:

And of thoſe that have arrived us, many are but References and Recitals in other Records, not the Original Records themſelves; by which the Original Records eſcaped an utter Oblivion, againſt the Will of our Civil Expurgatories.

But of ſuch that remain, the moſt laudable Uſe of them is, to give Authority to the preſent State of our Government; and we ought with good reaſon to interpret them in an agreeableneſs to the preſent Eſtabliſhment, becauſe the Change we ſuffer'd, was eaſie and natural: *ex Hercule pedem*, to invert the Proverb: For it is eaſier to know what Foot will fit *Hercules*, than to fit an *Hercules* to a Foot given.

CHAP. XXIII.

THough our Government hath always conſiſted of the ſame conſtituent parts, yet they have been ill ſized and proportioned, and unduely placed; not well joyned or united, or ſo blended, that neither could perform their Offices or proper Functions.

The Baronage of *England* was an over-grown part, and did by its Exceſs and extravagant bulk, diſorder the whole Oeconomy of our Government, and became it ſelf leſs uſeful. The Ho-

nor of the Baronage was leſſened to nothing by the Numbers thereof; they did not find themſelves ſo much obliged to ſupport the Majeſty of the King, for the Preſervation of their own Grandeur, as our great Barons are in our preſent Conſtitution. The People were in ſome ſort repreſented by them, and they were a great Body of the Chiefeſt Free-holders; but they had a power to oppreſs them, as they were not obliged by ſo ſtrong a Tye and plain Duty to a care of the People, becauſe not choſen by them; and by that Choice, put under a more clear and ſtrict Truſt of taking care of their Rights. In this Conſtitution, neither King, Lords nor Commons had their Ends; and therefore would not have the old Conſtitution revived, if it were poſſible.

When the Repreſentatives of the People, which make the Houſe of Commons, were joyned with the Lords, and ſate in one Houſe, they could not diſcharge that Office of a Repreſentative ſo well, as ſince they are divided from them, and make a diſtinct Houſe. They could not well uſe that Freedom of Speech and Debate, under the Obſervation of the great Lords, upon whom the Principal Gentlemen had great Dependencies. Their Conſent was often very improperly ſuch; for he onely truly and naturally conſents, who hath entire Freedom to diſſent: *Si vis ſcire an velim, effice ut poſſim nolle.*

In

In the granting Aids for the Support of the Government, and defence of the Kingdom, a Matter of the greateſt Importance, the Clergy, Nobility, and Commons, ſtood divided, and could not, as the Ancient Conſtitution was, by one Act of State be regularly and proportionably taxed according to the Exigency of the Affairs, and their reſpective Abilities; but thoſe three Orders taxed themſelves in ſuch meaſures as they pleaſed, which made the Kingdome, *Geryon*-like, a Monſter of three Bodies.

Their ſeveral Conceſſions, by this means, not likely to be always equal, and in the whole not competent to the inſtant neceſſity.

The Biſhop, Abbots, and other Eccleſiaſtical perſons of the *Saxons* time, held their Lands free from all Secular Services, beſides the *Trinoda Neceſſitas*, viz. *Expeditio*, *i. e.* Supply for War, *pontium & arcium extructio.* But King *Ethelbald* did grant, that the Eccleſiaſticks ſhould be freed from all publick Charges, except for the Building and Repairing of Caſtles and Bridges, *Ingulphus*, *pag.* 853. The like Immunity was allowed to the Clergy of the Empire, by *Honorius* and *Theodoſius*, *Lib.* 4. *Cod. Juſt. de priv. Dom. Aug.* By the Great Charter their Priviledges were confirmed. And for this reaſon the Clergy have taken themſelves not of Right chargeable to Aids granted to the King by Parliament. This Exemption hath been en-

vied to them, and made matter of Reproach, though unduely, in after-Ages. But notwithstanding this Exemption, they have aided the Crown with Supplies frequently; yet in such manner as asserted, and saved their ancient Priviledge of being exempt; that is, they would not suffer themselves to be involved in a general Law; but of their own Freedom and Will, gave to the King: which Concessions were notwithstanding not legal, unless confirmed by Parliament, to whom belonged always the power of judging of the Freedom and Ends of giving Aids and Benevolences, and the necessity that required them. But in the last Ages, they have, for their Commendation and Honour, waved their pretences of Priviledge and Exemption; and for the sake of Common Justice, and the Publick Weal, for avoiding being thought less in their Duty to the Publick than their Order required, and for the better ascertaining, and more equally adjusting the Parliamentary Aids, they have submitted to be taxed by Acts of Parliament.

The Commons in Parliament we find, as late as *Henry* 7. taxing only the Commons, and that by Indenture between them and the King, (This Form of Grant, is utterly exclusive of the Lords Power to change the *quantum*, times of Payment, or ways of Levying of the Aids granted) wherein they subject all Lands to the Levies thereof, but the Lands of the Lords in

Parlia-

Parliament, or Land amortis'd to the Church. Such an Indenture was made in Parliament held at *Weſtminſter*, 10 *H.* 7. and is pleaded at large in *Raſtals Entr. fol.* 135. But of late our Government hath cleared it ſelf from that grand inconveniency.

The Commons in Parliament, and thoſe whom they repreſent, being far the greateſt Proprietors, they reaſonably challenge it their Right to propound all Aids, and appointing the Levies, and Methods of raiſing them; which (becauſe it muſt be agreed that the Commons in no congruity can tax the Lords authoritatively, or impoſe upon them) muſt have *civilem intellectum*; that is, the Commons in a Bill of Aids do propound, that they will agree on the behalf of the Commonalty, that they ſhall be taxed as the Bill propounds, if the Lords for their part will agree the ſame.

CHAP. XXIV.

NEither was our ancient Government without great faults and inconveniences in the conduct of Religion, the principal care of all Governments. On the one ſide, by confounding Adminiſtrations which ſhould have been kept diſtinct, which was the fault of our Government in the *Saxons* time; and by utterly diſ-

joyning and ſevering the Church and State, and not tying the Eccleſiaſticks to a juſt dependency upon the State, which was the Evil of after-times; that is to ſay, the Eccleſiaſticks were left to themſelves to convene Councils, and to make Canons, without any dependence upon, or relation to Parliament.

The Conſtitution was ſuch in the *Saxons* time, that the Synods or Councils which govern'd in Religious matters, were the ſame with their great Council or Parliament. By this means all the Rules and Orders that were made in the matters of Religion were not Canons, which are of the nature of Councils, but Laws, and obliged thoſe that contravened them to temporal puniſhment. The Church was thereby turned into a Dynaſty, and Religion was againſt its nature promoted by force, which can onely truly obtain by perſwaſion. And whereſoever this is in practice and uſe, the Clergy, to the great ſcandal of their Office, will be entituled to all the Severities that ſhall be inflicted upon Diſſenters. Heretofore the Councils of the Church, and the Authority of the State, were unduly confounded.

After that, we had Legatine Councils, and Provincials convened by the Archbiſhops as they pleaſed, not under the obſervation and control of the Civil Power; by which many inconveniencies were occaſioned, many embroilments of the people happened, the Authority of the Prince leſſened, and Civil Rights encroached

croached upon; the validity of ſeveral good Laws made in Parliament diſputed, clamoured againſt, and ſentenced as unlawful. For want of a due ſubſervience and dependence of the Eccleſiaſtical Conventions on Parliaments, we had *Imperium in Imperio*, or at leaſt a Kingdom divided againſt it ſelf. This fault in our Government was help'd by *Edward* the Third, our *Engliſh Juſtinian*; he in the ſeveral Writs of Summons of the Biſhops to Parliament, made it a ſetled Rule, that the clauſe of *Præmunientes* ſhould be inſerted, requiring them therein to warn reſpectively, *Priorum & Capitulum Eccleſiæ veſtræ C. ac Archidiaconos, totúmque Clerum veſtræ Dioceſis, quòd iidem Prior* (which if a Cathedral is the ſame as a Dean) *& Archidiaconi, totúſque Clerus veſtræ Dioceſis, quòd iidem Prior & Archidiaconi in propriis perſonis ſuis, & dictum Capitulum per unum, idémque Clerus per duos Procuratores idoneos, plenam ac ſufficientem poteſtatem ab ipſis Capitulo & Clero habentes, prædictis die & loco perſonaliter interſint, ad conſentiendum his quæ tunc ibidem de communi concilio ipſius Regni noſtri, Divinâ favente Clementiâ contigerint, ordinari.* And accordingly the ſeveral Biſhops, in obedience to ſuch like Writs of Summons to Parliament to them directed, ſummoned or warned their Deans or Priors, Archdeacons, and the Clergy by their Proxies; which have ſince made the Convocations, or the Eccleſiaſtical Councils of the Kingdom, and are to meet at every Seſſion of Parliament,

ment, but to debate nothing but what is propounded, and to publiſh nothing for Canons without the Royal Aſſent. So that they are to act nothing but under the obſervation of Parliament. This Convocation, or Eccleſiaſtical Council (other allowable Synods we have none) ought not to convene but when a Parliament is ſitting, and continue no longer than the Parliament.

We ought to obſerve herein, and applaud the excellent wiſdom of our Government, that in the very conſtitution of it hath provided for the peace of our Church, by ſilencing Controverſies which can never be determined with any effect; ſuch a wiſe expedient and courſe, as the beſt inſtructed Chriſtian Emperours did take, by their Edicts prohibiting publick Diſputations about ſubtil and nice Queſtions; as *Conſtantine*, *Martianus*, *Leo* & *Anthemius*, *Andronicus*, *Heraclius*, to mention no more. None but mad men and extravagantly preſumptuous, or utterly ignorant of Church-Hiſtory, will ever hereafter go about by Acts of Councils to end Controverſies, but rather to ſhame the Dogmatizers out of their contentious zeal, by ſhewing how little the ends and deſigns of Chriſtianity are concerned one way or other in ſuch Queſtions, in which thoſe that are moſt learned know leaſt; a little learned ignorance would diſcharge moſt of them from any longer troubling the world.

And

And farther, we muſt obſerve, to the Honour of our Nation, that it is ſo religiouſly wiſe, as to commit the Care of conducting Devotions, ordering the decency of Publick Worſhip, and cenſuring the Manners of Clerks, to the Biſhops, and the Principal Clergy; whereto their Religion, Wiſdom, Devotion and Moderation, beſpeak them the fitteſt Perſons.

No leſs remarkable is the Wiſdom of our Government, that it doth not make that which is properly the matter of Canons, the Subject of their Legiſlation, and thereby ſubject us to Temporal Puniſhments, where the Admonitions of the Church, and her Cenſures, are more proportioned Remedies to the diſobedient and froward. Laws oblige us to puniſhments, govern us by Fear and Awe, oblige with Reaſon or without Reaſon, becauſe they are Laws. They admit of no Eccleſiaſtical Relaxation or Diſpenſation, and bind when the reaſon ceaſeth. In whatſoever thing relative to Religion a Law is made, the matter is taken out of the Hands of the Church-men, and no longer under their Government; whoſe Government is a Miniſtry, not Empire and Dominion. They can inſtitute nothing but what they may reaſonably perſwade. *Nihil tam voluntarium quam Religio.* Lact. We can have no more Religion or Truth, than we can perſwade. Religion and Truth are to be promoted by moving the Will. The Church rules by perſwaſion, and her Canons oblige only

ly

ly for their Reaſon, Religion for the ſake of our own Edification, and the Edification of others, the Peace of the Church, and Reverence of our Paſtors and Teachers. Canons in their own Nature are Temporary, for the preſent neceſſity and convenience; variable and mutable, as the Edification of the Church ſhall require, and the prudence of the Guides of the Church ſhall determine; and therefore what is properly the Matter of Canons, ought not to paſs under Laws which are rigid and inflexible, peremptory, punitive and ungovernable. And this magnifies the prudence and Chriſtian Temper of our *Engliſh* Prelates.

CHAP. XXV.

LAſtly, I obſerve what a dangerous Opinion, our Judges ſometimes had in reference to the Baronage of *England*, *viz.* That it was in the Power of the King, or in any Nobleman, once ſummoned by Writ to Parliament, as a Baron, at the pleaſure of the King to relinquiſh his place, and determine the Nobility of his Family. Which Opinion had it not been corrected, would have made that State ambulatory and moveable, upon which the whole Frame of the Government depends. The Baronage of *England* is the Stabiliment of our Government, and may

may be ſoon made too weak to ſupport the other greater parts of the Building that reſt upon it, and are ſupported by it. It is this that moderates between the two contending Intereſts of Prerogative and Liberty, and prevents thoſe violent Concuſſions which would otherwiſe unavoidably happen.

——geminum gracilis Mare ſeparat Iſthmus,
Nec patitur conferre fretum ſi terra recedat,
Ionium Ægæo frangat Mare.——

Of what Importance therefore is it, that we ſhould be a Kingdom that cannot be ſhaken, as much as Humane Wiſdom can provide, and frail Materials will admit; That our Baronage ſhould not hold their places precariouſly at the King's Pleaſure, and be Depoſed at his Will? And yet our Judges, after that Honour was fixed in the Families of thoſe whom the King ſhould appoint by Writ to hold that Honour and Place in the Common-wealth, remembring that Baronage was at firſt a ſervice impoſed *ratione tenuræ*, by *William* the Conqueror: Our Judges, I ſay, more able to judge of Private Rights, than in Queſtions of State and Government, being under a prejudice, from the Conſideration of the Original of our Baronies, did allow the Plea of *Thomas de Furnival*, who had been called to ſeveral Parliaments by Writ, *That he was no Baron*, for that he held not his Land *per Baroniam, vel partem Baroniæ*; and therefore adjudged him no Baron. *Communia de Term. Sancti*

Sancti Hillarii, Anno 19 E. 2. *Rot. penes Remem. Dom. Theſ. in Scaccario pro Thoma de Furnival. Seniore exonerando.* But of this Cauſe they were not properly Judges; the Lords themſelves are the only Judges of the right Conſtitution of that Houſe; and they have anciently challenged a Writ of Summons *de jure & debito Juſtitiæ* for themſelves and Deſcendents; where they have been once ſummoned by Writ, and anſwered that Writ, and taken their place accordingly. And the whole Houſe doth conſtantly refuſe to act, until the Lord that complains of an Omiſſion, hath a Writ of Summons ſent him.

What Apprehenſions was had of this Honour, by *Thomas de Furnival*, and others in his time, I know not. But it might have been then, and ſince it is well underſtood, that that place which they ſuſtain in the Government, is of the higheſt Truſt; and the Benefits which redound therefrom to the Commonweal, the greateſt: For they make the Government as well gentle and good, as firm and ſtable.

Theſe Noble Lords *Marchers* are placed between two great contending Powers, to preſerve their due Boundaries and reſpective Limits, and oblige them to Right and Reaſon, by their Courage and Wiſdom: And for their Encouragement and Reward, deſerve the higheſt Honours; and that they ſhould be as they are, immortal in their Families. And accordingly it was reſolved lately in the Caſe of the Honour of *Purbeck*,

bark, in the Lords Houſe, that no Fine or Surrender to the King of the Honour of a Baron, can extinguiſh it, but that notwithſtanding it ſhall continue to his Heirs & Deſcendents: And that upon the cleareſt and moſt important Reaſon; for that the Conſtitution of the Government ought not (as in its own Nature it cannot) to depend upon the Will of the Prince, nor of Single Perſons that bore a part in the Government for their time, nor be prejudiced in Succeſſion by their Lacheſſe.

The ſame Priviledge doth belong to the Spiritual Baronage, the ſucceſſive Nobility of this Realm; and a Writ of Summons to Parliament can be no more refuſed any of them, or any of their Succeſſors, than it can to any of the Temporal Baronage.

I cannot but upon a review of our Government, applaud our happineſs, in that we enjoy, and were born to ſo excellent a Government, without our Sweat and Contrivance; which was arrived to by ſeveral ſlow Steps, and beaten out by the long experience of former Ages.

But it is a portentous thing, and of ill, very ill Omen, that a Government ſo Venerable and Auguſt, ſo Wiſe, Beneficial and deſirable, ſhould be aſſaulted with peeviſh Dotages, froward Petulances, and childiſh Cavillations: And that ſome Brain-ſick fooliſh Antiquaries, Rakers in the Rubbiſh of Time, ſhould imagine, that they can barter away our Govern-

ment

ment for mouldy Bread and clouted Shoes. But these we have before obviated. Another sort we have before engaged to consider in their ill Treatment of the Bishops in their handling this Question of their Right we now defend. To which I shall now proceed.

CHAP. XXVI.

FOR I am not now insensible of the great Prejudices that lie against the Right of the question, from those Calumnies that are thrown upon the Order: And that no reason, not the clearest Demonstration will be admitted to any Degree of satisfaction, until these be removed. Men's understandings are mingled with their interests and Passions. It is a hard matter not to see the person in the Cause; and if the person is dis-esteemed, his Right cannot be equally favour'd: Nay, which is more, if our Adversaries can perswade the World that the Bishops will abuse this their Right, nothing will be able to keep off this Conclusion, That they have none.

We most duly therefore here complain of the dishoneſt Artifice used by the Gentlemen we have undertaken in this Cause, *viz.* That they seek all occasions of lessening the esteem of the Bishops; and of them, they speak what they will. He that can believe what he will, is,

is an Infidel; and he that does what he will, is a man of no Conſcience; and he that can ſpeak what he will, wants Truth and Candour: But of a culpable ſort of Wilfulneſs we find theſe two Authors very blameable.

We muſt complain of theſe fierce Diſputants, that they ſtrive unlawfully; they contend with Paſſion, and a keen Animoſity; they ſtrike as well as argue; they lay about them right or wrong, to aſſault and wound the perſons whoſe Right they oppoſe: A wound and diſhonour do they give to their own hurt.

Animoſque in Vulnere ponunt.

The firſt and greateſt Injuſtice they do to the Cauſe againſt all Right and Reaſon, of which ſure they muſt be ſelf-condemned, is an odious remembrance of any thing culpable in the whole Succeſſion of Biſhops in the times of the loweſt degeneracy of the Chriſtian Religion, and of the heighth of Papal Uſurpation and Tyranny; which was more heavy in thoſe times upon the Rights of the Biſhops, than upon thoſe of the Crown.

When Princes through their own Weakneſs, or to ſerve their Intereſt, or to ſupport their defective Titles to their Crowns, or for obtaining Diſpenſations from his Holineſs for an unwarrantable Marriage, or for other ends and reaſons, could not, or would not defend the Biſhops and their Rights.

The very Order of Biſhops in thoſe times was

attempted upon, to be annulled by that Oecumenical Uſurper. It was diſputed, and boldly maintained in the Council of *Trent*, that the Biſhops were only *jure Pontificio*, and had no authority in the Church, but ſuch as his Holineſs would vouchſafe them. It was endeavoured to make them but his Subſtitutes: He pretended Powers to Create and Tranſlate them, diminiſh or enlarge their Dioceſes; gave them more or leſs Authority; did ſuſpend them alſo, and deprive them; and pretended, that they had onely a vicarious and precarious Authority from him; and in ſuch meaſures as he ſhould think fit to limit and appoint. Were not Proviſions and Reſervations firſt made by the Pope, upon Benefices belonging to Church-men? The Statute of the 25 *E.* 3. gave their Preſentations to the King, when the Pope uſurped upon them, as a Fortification againſt his Uſurpation and Invaſion. Did he not urge his Canon upon them, that they ſhould not *agitare judicium ſanguinis*, ſo much talked of in this Queſtion, that he might ſtrip them out of their Secular Greatneſs, that he might the better go over them, and tread upon them and their Eccleſiaſtical Rights?

Is there no Conſideration to be had by thoſe Gentlemen in this Caſe, of the *Error Temporis*, or *Vitia Temporum*? They will ſnatch at this unduely when it ſeems for their turn; but can they think that any Biſhop, under a Proteſtant Sovereignty, will ever return under the old Yoak?

And

And yet the buſineſs of Proviſions, Reſervations, and Diſpenſations, and of Pluralities, muſt be laid at the Biſhops Door (yea, though Diſpenſation of Pluralities is now eſtabliſhed by Statute-Law) with all the Uſurpations exerciſed by the Pope, the Firſt-born of the Children of Pride, to which they willingly-unwillingly were forced to ſubmit.

But how unrighteous a thing is it to load the Order it ſelf with all the Miſcarriages of a long courſe of Succeſſion? as if the faults of the Biſhops in all Ages, did ſtick to their reſpective Chairs, and had paſſed into the Office it ſelf.

But it is no wonder, that they remember the Faults of thoſe Biſhops unduely to the Diſparagement and Diſhonour of the Order and Succeſſion, when the *Folio* turns matter of Commendation into Reproach, and calls their contending for due Adminiſtration of Juſtice and Laws, Clamours for the breach of *Magna Charta.*

Inviſos ſeu bene, ſeu male facta premunt.

By this he ſeems to argue them guilty of affecting Temporal power, and intermedling unduely in Secular Affairs.

CHAP. XXVII.

BUT to discharge this Imputation, we will shortly remember how modest they have always been in the exercise of their Ecclesiastical Office; and how faithful they have always been in former ages, to that Temporal Trust which the Laws and Constitutions of this Government hath annexed to the spiritual Office of a Bishop.

The Bishops challenge nothing to belong to them of Divine Right, but the Exercise of their Ministry in the cure of Souls.

They do not assume the Office of themselves, but are appointed thereto by the Soveraign Power; and therefore the Bench of Bishops are not answerable for every one of their Order. They rightfully acknowledge the right of Investiture, and collation of Bishopricks, to be in the King, subject to Royal Exemptions and Priviledges from their ordinary Right. From which Exemptions Mr. *Selden* is too forward to conclude his Doctrine of *Erastianism*, for that the Exercise of their Function may be restrained, as well in reference to Persons as Territories, by the Civil Authority.

Their Convocations are convened by the King's Writ; they debate nothing without his Leave.

Leave. Their Reſults become Canons, and receive Sanction by the Royal Authority, and do not pretend to infringe any Temporal or Civil Right or Law. And beſides, their Convocations are always to be held ſitting Parliaments, and no longer, not at any other times: And whatever they debate or reſolve, is under the obſervation of Parliament. *Nequid detrimenti capiat Reſpublica.*

The Biſhops make no Laws about Religion apart by themſelves, neither have they any Negative againſt any that are propounded; and therefore are not anſwerable for any that are made or not made. They have not the definition of Hereſie, but the Law hath declared it ſince the Reformation. And the Writ *De Hæretico Comburendo* is ſince abrogated by the Chriſtian temper of a Parliament principally conſiſting of ſuch Members that were conformable to the Inſtitutions of the Church of *England*; that is, the legal Eſtabliſhments of this our Chriſtian Commonwealth.

The Church of *England* is no more her own preſent Eſtabliſhments, than the preſent thoughts of any man is the man himſelf. As the thoughts of a man are more refined and unreproveable as the man grows wiſer, ſo do the Laws and Conſtitutions, the Orders and Rules of a Church or Chriſtian Republick, alter, amend, and improve, as the Wiſdom and Virtue, Religion and Devotion of the Government, and the principal parts

thereof in Church or State increaſeth or advanceth.

Our Biſhops have had, and that with the greateſt reaſon, greater apprehenſions of Schiſm and Separation, than of errours in Opinion which occaſioned it, as of worſe importance to the Chriſtian Faith than the errours themſelves. Beſides that a man cannot help being miſtaken in many things, but it is in every mans power to be modeſt and peaceable, and wiſe to ſobriety, and *hold the unity of the faith in the bond of peace and charity*; and not to revile and deprave that which hath the publick approbation, though he cannot thereto fully aſſent. It is great iniquity and unrighteouſneſs in any man, to pretend to Liberty of Conſcience as his right, and in the mean time not to tolerate the publick appointments, and what is authoritatively allowed and approved.

If Controvertible Opinions are allowed a Warrant for making a Sect and ſeparate Communion, and Churches are denominated and diſtinguiſhed by them, and conſequently ſuch Opinions are advanced unduely unto the ſame neceſſity of belief as Articles of Faith: What will become of the Chriſtian Verity? where will it be recognized and purely profeſſed? how diſtinguiſhed? how underſtood? how aſcertained amidſt the the number of Opinions contended for, by the ſeveral dogmatizing Sectaries, with more zeal than the undoubted and uncontrovertible Articles of Faith?

Nay,

Nay, I will adventure to ſay further on their behalf, that Schiſmatical Separations would not offend them, (ſo little do they affect to be Magiſterial) but for that, if this Diſeaſe ſhould grow epidemical, there would be no ſuch thing as a Chriſtian Church, and the Chriſtian Religion would periſh from the Earth without a miracle.

It is onely deſigned by our Church, that thoſe whoſe Subſcriptions are required, ſhould thereby onely ſignifie their allowance of the Liturgie and Articles, as fit to be uſed and allowable. What Plea then can our Separatiſts have for a Toleration for themſelves, who by their Separation ſeem unwilling to tolerate the publick Eſtabliſhment, either from our Governours Civil or Eccleſiaſtical, or from one another in their divided Ways?

To reform or change to theſe mens pleaſures, is impoſſible; for that they cannot (they poſitively differing from each other) be all pleaſed in any one poſſible Eſtabliſhment. Beſides that, until we ceaſe to be Schiſmaticks, and to be of ſeparate and divided Communions upon the ſcore of any diſlike, or but probable exception to what is publickly received or allowed; the altering any thing for our ſatisfaction, will be but applying the Cure to the Symptomes, a cutting off one head of the *Hydra*. By this way toeffect an union, is as impoſſible, as it would be toempty the Ocean, without ſtopping the current of the Rivers.

The Biſhops are (as all men, by how much they are better learned, are) of the greateſt moderation in Opinions, and can tell how duely to rate and value (according to the Prejudice or Advantage they do to the ends of our Religion) thoſe ſeveral Opinions that have been contended with furious and rending Zeal, in the ſeveral Ages of the Church, to the Scandal of that peaceable Inſtitution.

They can have a better opinion of that man who hath unhappily entertained the leſs probable ſide of the Queſtions controverted, if he opines with modeſty, than they have of him that holds the moſt probable part thereof with a Sectary-zeal, Separation from, Contempt and Diſdain of thoſe of a different perſwaſion. Their Moderation is known unto all men; of it their Oppoſers have had very ſenſible experience: the ſeveral Diſſenters cannot diſown, but muſt confeſs, that they have had ſeverally kinder uſage from the Epiſcopal men, than their ſeveral parties have from one another.

By their Learning, Wiſdom, and Moderation, which is moſt eminently known and obſerved in many of them, and hath recommended them to the higheſt eſteem, they muſt be allowed (their Enemies being Judges) to be the fitteſt Arbiters of the Controverſies, and the moſt likely and probable procurers of the Peace of Chriſtendome.

All

All the diſſenting parties have reaſon to look upon them as their common Sanctuary and Defence againſt the outrages of each other.

But in this they muſt be pardoned, if they, being under a Law or Rule of their Superiours (made, as they think, in a matter lawful) act accordingly, and do not diſobey for their ſake who think otherwiſe, though in the mean time they pity their ſcruples.

Indeed the Terms of the Nonconforming Miniſters have been made hard upon them; but that hath been from reaſons of State, which the late unhappy Wars occaſioned; and they were ejected out of their Livings by Statute-law. And on the other ſide it is true, that many men, not ſo fit for that holy Function, have enjoyed Church-benefices; but neither this can the Biſhops help: For they cannot reject a Clerk preſented to a Benefice, or eject him, but as the Law will, (ſo ſacred is the right of Patronage, and ſo fixed by the Law are Miniſters in their Livings) which is not nice in the manners of Clerks; and the Biſhops cannot be ſeverer than the Laws.

So that if ſome men not of the moſt unblamable converſations have kept their Livings, and ſome of very unexceptionable Lives have been ejected, the unhappy Nonconformiſts are directed where to make their complaint.

But as there is little cauſe of complaint on this part of the Epiſcopal Authority and Function,

on, *viz.* their Superintendency over the Paſtors of their Dioceſſes: So we ſhall obſerve how they have behaved themſelves in the exerciſe of the power of the Keys: For what is done therein by their Chancellors and Officials, to whom Cuſtom hath given ſome Powers and Authority which cannot be check'd and control'd by the Biſhops themſelves, they are not to account. Neither are they anſwerable for the Lay-Zeal that hath made the condition of Excommunicates ſo very afflictive. For whatever ſome men pleaſe to think, the Laity have out-done the Eccleſiaſticks in the Exceſſes of intemperate Zeal, as they are moſt apt and prone by their Ignorance to Superſtition. No man can paſs under the Admonitions of the Church, and be ſuſpended from the Holy Myſteries until he hath made ſatisfaction for his diſorderly walking, or ſpiritual Pride in breaking Order, but he is preſently given up by the Laity to Satan. I mean, he ſuffers beyond the firſt intention of the Church in her Diſcipline Severities enacted by the Laws of the State, which if reverſed by that Authority that eſtabliſhed them, and a civil Proceſs were enacted for the Eccleſiaſtical Courts in Cauſes of a Temporal Nature, which are appointed by Law to their cognizance; I perſwade my ſelf, we ſhould hear of no more complaints againſt them in the Exerciſe of the Power of the Keys.

For

For we obſerve, that they exerciſe the Power of the Keys with deference to the Secular Magiſtrates: They never preſume to excommunicate the Prince, leſt they ſhould thereby leſſen his Authority, and ſhock the Government; for that all Government is eſtabliſhed by the Honour and Reverence of the Governour, according to that ſaying of *Ariſtotle*, ἐκ τῆ καταφρονεῖσθ πόλας ἡῤῥ καταλυσίων, Diſſolution of Government doth eaſily follow the Contempt of the Governour. As Kings are not ſubject to Penal Laws, nor to be coerced by Penalties: So true it is alſo, what *Balſamo* hath noted, *ad* 12 *Canonem Synod. Ancryanæ*, *Imperatoriâ unctione penitentiam tolli.*

Neither do they preſume, in Reverence to the King, to excommunicate his Counſellors, and Miniſters of State and Juſtice: For ſo it was declared amongſt other of the *Avitæ conſuetudines* of this Realm, by the Aſſize of *Clarendon*, *Nullus qui de Rege teneat in Capite, nec aliquis dominicorum miniſtrorum ejus excommunicetur, niſi prius Dominus Rex conveniatur*; in which our Biſhops are agreeable to the Ancients. *Hildebert Cenoman.* after Biſhop of *Tours*, who lived about the eleventh Century, ſays, *Apud Sereniſſimum Regem opus eſt exhortatione potius quam increpatione, Concilio quam præceptis, doctrinâ quam virgâ.* *Ivo*, Biſhop of *Chartres*, in his Apologie for communicating------- *Gervaſius* ſaith thus, *Quos culpatorum Regia Poteſtas, aut in gratiam benignitatis*

benignitatis receperit, aut mensæ suæ participes fecerit, eos etiam Sacerdotum & populorum conventu suscipere in Ecclesiastica Communione debebit; ut quod principalis pietas recipit, nec à Sacerdotibus Dei alienum habeatur.

Thus while the Bishops are not guilty of mean and unfaithful flatteries, they do not participate of the pride of the Bishops of *Rome*, or the irreverence and sawcinesse of a Presbyterian Consistory, against their Princes and Governours.

Neither do they call up any criminal cause originally to their examination, but pronounce the sentence of Excommunication on such onely as first are civilly convict of a crime; save that matters of Incontinency are by the Common Law submitted to their Censure; for that by the venerable gravity of the Judge, and by the more private examination of such offences, the modesty of the Nation is best preserved; which is a surer defensative against the rifeness of such Crimes, perhaps than the sharpest punishments.

If they do excommunicate any man without a just cause, or do not absolve the Excommunicate when he hath made his satisfactions, the Bishop is compellable by the Authority of the Kings Courts to assoil the man, under the pain of having his Temporalities seized into the Kings hands, though he is not restored without the Episcopal Absolution. For it is fit they should finally judge in their own proper Province; and they

they muſt not, they cannot relax the Laws of Chriſt, nor adminiſter the power of the Keys of binding and looſing, by any other meaſures, for any power on earth. But againſt this power of the Kings Courts they do not diſpute or declaim, but have recognized it by their ſubmiſſion; and they can ſubmit to the penalties, without complaining of this civil Conſtitution: Nay, in the general order they approve it, though in a particular caſe perhaps they do not, becauſe they cannot obey.

Our Biſhops do not encroach any Temporal Authority *in ordine ad ſpiritualia*, that ſtale pretence by which the Biſhop of *Rome* hath arrived to his exorbitant power, and by which the *Scotch* Presbyters would have acquired the like over Kings and Governours. Their Authority always adminiſters to, and aſſiſts, but never thwarts or contradicts the Temporal. They have accommodated their power of the Keys to the vindication of our eſtabliſhed Government, againſt the attempts of Arbitrary Power; to which their Allegiance to the King, and the regard of the Publick Peace, did oblige them: For ſuch attempts are moſtly the ruine of thoſe that make them; always bring the Government it ſelf into the greateſt danger, and ſometimes prove the ruine both of the Government and the Nation.

This was required of them as an indiſpenſible duty, they being a principal part of the Government;

vernment; and the preſent Biſhops, Succeſſours to all their Rights, have no reaſon to decline their example, if they have the like cauſe.

The Biſhops anciently were ſturdy oppoſers of King *John*, when he deſigned to put this Kingdom into Vaſſallage to the Pope; and thereupon he writes to the Pope thus as followeth: *In conſpectu paternitatis veſtræ humiliamus ad gratias multiplices, prout meliùs ſcimus & poſſumus, exhibendas, pro cura & ſollicitudine, quam ad defenſionem noſtram & Regni noſtri Angliæ, paterna veſtra benevolentia indeſinenter apponit, licèt duritia Prælatorum Angliæ & inobedientia impediant veſtræ proviſionis effectum. Pat. 17 Joannis R. M. 15.* as I find it related by Mr. *Petit*, in his Book entituled, *The ancient Right of the Commons of* England *aſſerted.*

About the 24 *H.* 3. *Edmund* then Archbiſhop of *Canterbury*, at a Synod held at *Weſtminſter*, the King being preſent, *Candelis acceptis, & projectis, ac extinctis, Chartam Libertatum violantes, vel ſiniſtrè interpretantes, excommunicantur. Mat. Paris, p.* 151. About 13 years after, *viz.* in 37 *H.* 3. *Boniface* then Archbiſhop of *Canterbury*, the Sentence of Excommunication is again repeated againſt thoſe, *Qui Eccleſiaſticas Libertates vel antiquas Regni Conſuetudines in Chartis communium Libertatum & de Foreſta conceſſas quaſcunque, arte vel ingenio violaverunt. Fleta l.* 2. *c.* 42. *Dorſ. Clauſ.* 37 *H.* 3. *membr.* 9. *Additament. ad Mat. Paris, p.* 117. Which Sentence of Excommunication

munication was ratified and confirmed in a Parliament held that year, as followeth: *Noverint univerſi quòd Dominus Rex Angliæ, illuſtris Comes Norfolk & Mareſchallus Angliæ, H. Comes Hereford & Eſſex, J. Comes de Warewico, Petrus à Sabaudia, ceteríque magnates Angliæ, conceſſerunt in ſententiam Excommunicationis generaliter latam apud Weſtm. decimo tertio die Maii, Anno Regni Regis prædicti 37, in hac forma, viz. Quod vinculo præfatæ ſententiæ ligentur omnes venientes contra Libertates contentas in Chartis communium Libertatum Angliæ, & de Foreſta, & omnes qui Libertates Eccleſiæ Angliæ, temporibus Domini Regis & prædeceſſorum ſuorum Regni Angliæ obtentas & uſitatas, ſcienter & malitiosè violaverint, aut infringere præſumpſerint.* And the Record concludes, *In hujus rei memoriam, & in poſterum veritatis teſtimonium, tam Dominus Rex quàm prædicti Comites, ad inſtantiam aliorum & populi præſentium,* (which at that time was the ſtyle of a Parliament, and the manner of paſſing ſuch Acts) *ſcripto ſigilla ſua appoſuerunt. Rot. Pat. 37 H. 3. M. 12. dorſo.*

And whereas it was provided by the *Confirmat. Chart. c. 4. 25 E. 1.* and by the Statute *De Tallagio non concedendo, c. 4. 34 E. 1.* That Excommunication ſhould twice a year be denounced againſt the Infringers of *Magna Charta:* At a Synod held for the Province of *Canterbury* in that Kings time, *John Peckam* Archbiſhop of *Canterbury*, the like Denunciations were injoyned to be

be made four times every year, *Conſtit. Provinc. tit. De Sententia Excom.* And in the Province of *York* it obtained three times in a year, *Manuale juxta uſum Eccleſiæ Eboracenſis.*

By which the exemplary zeal of the Biſhops in thoſe times againſt Oppreſſion, and the violation of the common Rights, and the attempts of abſolute and unlimited power appears; for that they prevented the Temporal Baronage, and outdid the Parliament it ſelf in defending and guarding the Government of Laws.

By the way we cannot but take notice of Mr. *Selden* his miſtake in his Book *De Synedriis*, which he fell into by inſerving to his beloved *Eraſtian Hypotheſis*, viz. That that Excommunication before mentoned in 37 *H.* 3. was enacted by Parliament; whereas it was onely confirmed, but pronounced by the Biſhops, though with the ſeeming good liking of that King; ſo that the power of the Keys was not uſurped, but the exerciſe thereof approved by Parliament; according to what hath been uſual, as *Grotius* obſerves, *Uſum Clavium Divino Juri congruem, & pœnarum injunctionem Canonibus & Legibus conſentaneum, ſummæ poteſtates ſolent approbare; atq; hoc eſt Imperiale Anathema, Quòd non una Juſtiniani lege comprehenſum eſt.* Which, together with what hath been ſaid by us in this Chapter, will ſerve for an Anſwer to what Mr. *Selden* hath aggeſted in his Book *De Synedriis*, for wreſting the Keys out of the hands of the Biſhops, and for the annulling all Eccleſiaſtical Authority.

They

They pretend to a *Jus Divinum* only for that which merely concerns their Spiritual Office; and I cannot for my part ſuſpect them of holding any Opinion of a *Jus divinum* in Civil Offices, which are of a Humane Original, becauſe I can imagine no reaſon for ſuch an Opinion; though I know it is by ſome imputed to them.

By a *Thomas* of *Becket*, a *Sibthorp* and *Manwaring*, and a few leſs-conſidering Clergy-men in an Age, we are not to conclude the Judgment of the Body of our Learned Clergy. They aſſuredly know, as all men in their Wits do believe, that the Government is *de jure humano* ſuch as it is, and can be no other, nor rightfully admit any Alteration. That God never made any Commonwealth but one, by his directive Will, and that only for one Nation (for in theſe things, he hath left men ordinarily in the Hands of their own Councils, and to their own Prudence) in which he had no regard to the abſolute rightful Sovereignty of *Adam's* right Heir, the wildeſt certainly of all the Paradoxes that this giddy phantaſtick Age hath produced. The *Kentiſh* Knight ſhould have kept his Dream to himſelf, until he had found him out, and then have brought him and his Book called *Patriarcha* together to the King: Then I doubt not but his Majeſty would have provided him his due Reward. But his Book, and the Publiſhers thereof, deſerve his Majeſty's

utmoſt Diſpleaſure: For we are in fear that the Government is about to be changed, when Books are licenſed to prove any thing Lawful in that kind. And beſides, it makes a Charge upon our Divines, that they have a good liking to the Deſign, for that they who beſt underſtand by their Profeſſion the *Jura Divina*, have not anſwered it. But to ſpeak the Truth, the Book is not to be anſwered: For it is but a fine Eſſay, how near Non-ſence may be made to look like Sence; and it is truly worth no man's Undertaking.

But whatſoever ſiniſter thoughts ſome ill-affected Men to the Biſhops may conceive of them, we expect, and with reaſon too, that they will, with equal Courage to that recorded of their Predeceſſors, ſtand up for the Preſervation of the Government, in its true and rightful Conſtitution. And the rather, for that the true Religion, their Principal Care, and their Temporal Rights and Dignities, will inevitably periſh in the Change: Nay, perhaps in conſequence of the very Attempt of a Change, except they ſtrenuouſly for their parts oppoſe it. However, their Order will certainly, by their Silence and Indifferency, be rendred deſpicable. They will loſe all opinion with the People of their Sincerity, perform their Functions with no advantage, and loſe that ſhare in the Honours and Affections of the People that will eſtabliſh them, and beſpeak them uſeful and neceſſary to the Church and

Sta-

State in their ſeveral Capacities, in all after-times. That they anſwer their Truſt, and perform that Duty which they owe to the Publick in their ſeveral Offices, is that we may juſtly expect: And this they will certainly do, though they ſhould be cenſured, as they were in K. *John*'s days; or in the Language of the *Folio* Author, charged to be clamorous and over-buſie Medlers in Matters of State and Government. But to return;

Is it not a coarſe Artifice in the *Octavo*, *pag.* 96. that he will ſo wilfully miſtake the Queſtion of the Biſhops being *one of the three States*, and repreſent the Matter as if the Biſhops *ſhould have a Negative by themſelves, to ſtop the paſſing of any Bill, if they are admitted to be a diſtinct State*?

CHAP. XXVIII.

WHen it is not diſputed, or brought into Queſtion, whether they are divided in their Voting from the Temporal Barons, moſt certainly they never were; nor was it ever diſputed. Though an obſtinate Opinion was maintained from the time of *E.* 2. in the Caſe of the *Spencers*, until the time of *E.* 5. in the Caſe of the Earl of *Salisbury*, That the Biſhops Preſence was neceſſary in Judgments, even in Ca-

pital Cauſes, which muſt be allowed a clear Argument for their Right of Judgment in ſuch Cauſes. For the Spiritual and Temporal Lords, though two States, make but one Houſe, upon the Reaſons afore-mentioned, according to the general Underſtanding and Uſage of former Ages. But upon this Suppoſition, he tells us of ſeveral Bills that gave furtherance to the Reformation, to which the Biſhops did not aſſent, and would never have paſſed, if they had had a Negative upon them. But by his Favour, theſe Inſtances of his, are great Arguments of thoſe Biſhops their Sincerity: For they muſt needs be under great and violent Prejudices: Beſides, every great man (as the Author of the Letter well knows) is apt to value himſelf, and cares not to be accounted a light man; and the higher in place, the more unwilling to be found in a Miſtake: and they are not content, if Old Men,

Quæ juvenes dedicere ſenes perdenda fateri.

There is good Hopes therefore, that our Rightfully Reformed Biſhops will be the laſt that will give up the Cauſe of Reformed Chriſtianity, and will not be out-done by the Popiſh Biſhops in Conſtancy, when they have a better Cauſe.

I muſt likewiſe take notice, to do the Spiritual Lords Juſtice, of the Behaviour of the Gentleman

tleman in *Folio* towards the Biſhops. He takes notice, and that dutifully, of the Satyrical (ſo he calls it) Language of the Pamphleteers againſt the Court, and the greateſt Scurrilities with which the Houſe of Commons are aſperſed; but has not heard, ſure, of any againſt the Biſhops, and the whole Eccleſiaſtical Order; for he makes not the leaſt mention of any ſuch: But becauſe they ſhall not eſcape (beſides that in his Book he declaims ἀπ' ἀμαξῆς, againſt the Order, and ſeems ſo fond of this Office, that he forbids all other the uſe of the Cart) he tells the Story of *Hepheſtion* and *Craterus*, the one of which loved *Alexander*, and the other the King. By this Apologue, I doubt not but he intended a Slander, and to ſignifie thereby ſuppreſtly a lewd reproach, *viz.* that the Biſhops are not true Servants of the King and Government, but of themſelves; than which a falſer thing, I hope, cannot be ſaid, nor a more malitious thing imagined, if not true: For he may know, that they are better men in their true Character, than his Loyal Patriots, that are true to the King and Houſe of Commons: For they have, I doubt not, I am ſure they ought to have a care of the whole Government in the Integrity of its Conſtitution.

The Biſhops well know how much the People are concerned in the Greatneſs of the Houſe of Lords, which eſtabliſheth the Throne, and makes and ſupports the King Great; and by

their Power and Intereſt, make his Government equal; to which they contribute no ſmall Share; for to them is entruſted, by the Authority of our Lord Chriſt, the Conduct of Religion; and that mighty and momentous Office hath commended them, and advanced them to the State of Peerage; and will continue them in great Authority with the People, as long as the Nation continues in any degree Religious. The Temporal Baronage cannot want them, in the Support of that mighty Province that belongs to that Houſe. In them the People will find their Intereſt, as long as they can value Wiſdom and Religion, that is, as long as they are Chriſtian Men; and by them the Kingly Office will find it ſelf ſerved, as long as true Religion and Wiſdom can miniſter to the Support of Government, and wiſe and good men under the greateſt Truſt, and in the higheſt Dignity in the Government, can be fit Councellors and Miniſters of State.

The *Octavo* hath alſo a hint to this purpoſe: for *pag.* 30. where he brings in the Caſe of *Thomas Arundel* Arch-biſhop of *Canterbury*, when all the Biſhops made Sir *Thomas Piercy* their Procurator, he ſays, That uniting in one man, argued a great Unanimity in the Voting of the Prelates; which ſeems, ſaith he, hath ever been. The meaning of this is a ſly Diſparagement of the Biſhops in their Voting, *viz.* That they have one Common Tie and Dependency upon the Crown, that,

that determines them to that Intereſt, and produces the Unanimity of Voting.

But are the Biſhops more depending, becauſe they once for all received their Temporalities from the King, than the Temporal Lords, who are commonly Officers of State, and otherwiſe depend upon their Prince's Favour? Is not the Biſhops Advancement rather a reward to their Eminent Services performed in the matter of Religion, of the greateſt Importance certainly to the State, and a Recognition of the excellent Character of thoſe men that are preferred to that Office, than a Bribe upon their Actings, after they have received that Favour irrevocable?

Do not we know that the Services of Churchmen are rewardable upon the Churches Stock, and that the King need not impair the Royal Treaſure, to pay Thanks to Epiſcopal Men, whoſe Worth doth beſpeak the Royal Favour to that Preferment and Advancement? Are not the Temporalities of the Church the King's only to give, but not to retain? What evil Prejudice or Obligation can this be to any man, to ſerve the King unfaithfully, who hath choſen him perhaps, though there were others but as equally fit for that Office: for we ought to ſuppoſe no other diſpoſition of thoſe Dignities, than what is juſt and fit, in our general Diſcourſes, however things are adminiſtred in particular Caſes.

Is not this an Office, together with its Maintenance, of the Proviſion of the Law, and not of the King?

But to remove that Scandal of their Unanimity in voting, which ſome have reproached with the ſcoffing Term of a *dead Weight*, it may be conſidered, that Men of the beſt Judgements and Honeſty moſtly agree: That Variety of Judgments proceeds oftner from Paſſion and Intereſt, than from the Difficulty of the matter debated. It moſtly grows, either from want of Integrity, or want of Judgment. Agreement in Votes, is an Argument therefore of true Judgment, and unbiaſſed Integrity: As it is alſo farther, of a good Correſpondence amongſt themſelves, of previous Debates, and more mature Deliberation. Beſides that it is no unuſual thing in difficult and lubricous Affairs, for many to compromiſe the matters to a few, or to the Majority of their own Numbers, and abide the Reſult of the *major* part.

But becauſe this matter of Exception to the Interity of my Lords the Biſhops, in the great Affair now in Agitation, is *argumentum ad hominem*, and gives Prejudice to the true Right and Merits of the Cauſe; and is the moſt prevalent and hopeful Argument, if not the onely one that our Adverſaries can rely upon: For whatever the *Cauſa juſtifica*, or Pretence be, for the eſpouſing of any Opinion, or part of any Controverſie; if the *Cauſa ſuaſoria*, the Inducement,

ducement, and true moving cauſe thereto be ſtrong and perſwaſive, the ſlighteſt Reaſons will be a pretence for Confidence, and the ſmalleſt Colour of Right ſhall prevail finally; and in the laſt Iſſue, eſpecially where the Parties concerned muſt judge, or by their Power can make their Will and determinate Reſolves to obtain to the biggeſt purpoſes. I will therefore farther add:

That we well know what a high Eſteem their true Character doth deſerve. That they are intended the Light of the World, the Salt of the Earth: If the Salt has loſt its Savour, where-with ſhall it be Seaſoned? And if our Light be darkned, how great is our Darkneſs? The Biſhops know, that the World will not be kept in Order, by meer Deſignations of Truſts, but by Execution of thoſe Truſts; not by abſtract Charecters, unleſs they are put on, and effectively worn. The World will not be put off, that there is no Proviſion made in the Government for reaſonable Expectancies of all that can make a People happy, if we are diſappointed in our juſt Expectations. They know for what high Ends they are advanced to their Secular Dignities. What was it that hath thus advanced them? Was it not the reaſonable Expectation that Chriſtian Princes and Governours conceived of their excellent Vertues, that they would out-do all mankind in firm Conſtancy, a vaſt and extenſive Charity, unrelenting Fortitude, inflexible Juſtice, unmoveable

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Faith and Loyalty, and unbyaſſed Sincerity? What Temptations can their Lordſhips have, that they ſhould not, or we Reaſons to believe that they will not, put forth all thoſe Chriſtian Vertues in Heroical Degrees, which the World will not give them leave to exert onely in common meaſures? They will find it neceſſary ſure to be now Confeſſors, for the Support and Happineſs of a poor diſtracted Nation, a vaſt and great People. They will, no doubt, ſubdue the Greateſt Potentate to Juſtice (if there be any ſuch) who hath unhing'd the Government, and ſap'd the very Foundations of our Conſtitution; and will never Conſent to the Pardon of ſuch Sins, that are not to be pardoned in this World, nor in the World to come.

Can they ſuffer the true Chriſtian Religion, of which they are the chief Miniſters and Curators, to periſh by their timidity and cowardiſe? Can they ſuffer a great People committed to their charge, to be deſtroyed into an Anarchy, and deſert that Prince whoſe Beneficiaries they are, and not interpoſe for the ſaving of him and his Government, by faithful and wiſe Counſel?

To ſuppoſe ſuch things as are morally impoſſible, is unreaſonable, and to fear where no fear is. For they, if they were wholly ſecular, and were guided by nothing but a ſecular Intereſt, can conſider that the world is impatient of diſappoint-

appointments. That they hate nothing more than deceits and abuſe of truſts; and that he that falls ſhort, and goes leſs than a juſt expectation, falls into the loweſt and vileſt contempt and deepeſt ſcorn.

But this is not a time ſure to leſſen the Prelates, to take from the Biſhops any juſt advantage or honour, when that the contempt in this latter age thrown upon them, and the whole Order Eccleſiaſtical, and the miſchiefs that have naturally enſued thereupon, have brought our Nation, Religion, and Government, to a moſt miſerable ſtate, a moſt deſperate plunge, out of which I pray God we may be able to emerge.

The Contempt of the Biſhops and Clergy made the People deſpiſe the publick Eſtabliſhment, chuſe Teachers not much wiſer than themſelves: And they have thereupon multiplied vain Opinions and Diviſions, and true Chriſtianity is ſcarce had in any Conſideration. Atheiſm and Profaneneſs, upon this Stock, is come to an enormous Growth; which thrives the faſter, by the vain Opinions and Immoralities of the miſtaken Religioniſts, by which the Atheiſts take the Meaſures of true Chriſtianity; and in Conſequence of this, Popery is arrived to a vaſt Increaſe in Power and Intereſt, and threatens us, and the little Remains of true Reformed Chriſtianity, with an utter Overthrow. The true Chriſtian Religion is not generally underſtood, and hath loſt almoſt all Credit and Belief, in a Chriſtian Nation.

So

So that it seems to me, upon the Consideration of our present State, almost necessary, that the Truth of the Christian Faith should be again demonstrated in Flames, to this Infidel, flagitious, and degenerate Age; that the Stains of the Christian Religion must be washed off by the Blood of the Sincere Professors; That the true Faith should be better understood, as it will be by dying Thoughts, and vain Opinions be destroyed, and burnt up like Hay and Stubble in the Fire of Persecution: For then we shall understand what it is that is worth dying for; and that which is not worth dying for, is not worth disputing and dividing for in our Christian Communions, with breach of Charity. Then our Guides, the Holy Order of Bishops, and other Faithful Pastors of the Church, may shew their Sincerity, and appear of what Value they are of in the Conduct of Souls, by their wise Apologies and Noble Confessions and Martyrdoms for the true Christian Faith, and recover a due place in the Peoples Reverence and Esteem for their Successors. And if God, in his all-wise Providence and Care, which will never be wanting to his true Religion, shall think it necessary by this means to recover and restore it, let this Fiery Tryal come, let it come.

And then, I doubt not, but we shall have our ἡγούμενοι προϊστῶτες & περισκόπων, used in Scripture for the Prelates of the Church, to signifie

ſignifie the high Eſteem they had of them, and are the ſame with Leaders, Captains and Commanders; many *Cranmers*, *Ridleys*, and *Latimers*, leading up their Troops of Confeſſors, and a Noble Army of Martyrs, who will again ſeal the Chriſtian Religion with their Blood; and a more Glorious Church ſhall recover out of the Aſhes of this.

But God grant that we may diſpoſe our ſelves by more eaſie Methods, to recover out of our ſickly Eſtate, when we know our Diſeaſe, and may be cured by more gentle Remedies. But I am ſure that nothing can ſave our Nation and Religion, but an excellent Clergy, and a high Eſteem of them amongſt the Laity. And for this Reaſon, I have earneſtly concerned my ſelf for the Biſhops Right of judging in Capital Cauſes in Parliament, that they may want no capacity of making a gaſping Nation live; and thereby, of recovering themſelves and their Order into a high Veneration, that they may more effectually adminiſter to the Advancement of God's True Religion and Virtue, and making this Kingdom happy for Succeeding Generations.

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THE PREFACE.

I Cannot but take notice, That my honeſt Deſign in my *Argument* and *Poſtſcript*, to ſerve the Church of *England*, and therein the Nation, hath been by many perverted: and how it hath been endeavoured to make them looſe that effect to which they were ſincerely directed, I have therein aſſerted the rightful Authority the Biſhops have in the Government, and repreſented the juſt Expectations the Nation hath of their due Exerciſe of that Authority for the publick good; and have endeavoured to remove the great prejudice againſt their

Order ; eſpecially thoſe that are occaſioned by the Miſtakes of the Inferiour Clergy , for ſuch we have taken notice of, as thoſe which do moſt hurt , then eſteem and affect them with the greateſt diſhonour and danger. I have therein faithfully defended the Authority and Power of the Biſhops in the Government: But theſe I take to be but other Names for the *Duty* they owe to the Common-wealth. Civil Honours and Dignities declare reſpectively the truſts that the Government hath plac'd in the perſons under ſuch Characters , and admeaſure the Duties and Offices that are expected from them. The preſent ſtate of the Kingdom doth moſt importunately urge and require,that they ſhould perform their duty in its fulleſt and utmoſt extent , and thereby vindicate the honour of their Order: It cannot fail being venerable, in the ſame degrees we find it beneficial. All poſitive Duties indeed have an indefinite latitude, and

and we have a great liberty in the performing of them: They are not peccant againſt the rule of Virtue, who do not always exhibit to us the moſt Excellent Actions. It is not expected from the Duty that every Man owes to his King and Countrey, that he ſhould ſerve them always to his utmoſt Capacity, and with an Heroical Bravery. But he that doth not lend all the aſſiſtance to their ſervice which his place requires, and his power can perform, in the greateſt Exigency, in the Extreameſt need, is a wretched Traytor, and Betrayer of his Countrey.

In the *Poſtſcript* I have by no means leſſened the Authority of the Church, or narrowed their Capacity of ſerving the Publick-weal. But with great ſatisfaction conſidered their Authority, and how much they may contribute to the uniting our Diſtracted Nation, almoſt ruined by our Diviſions, which are occaſioned and promoted by the Enemies of our

Church, and principally deſigned for her Deſtruction. If we looſe our Government, for the ſake of her ruine, and in order to that we looſe it; and which is worſe, if we looſe it, it muſt be by the inſtrumentality of her Clergy: if the Government be not preſerved, the Church muſt periſh.

Therefore I did not confine my thoughts to a Defence of the Church her Rights, but employ'd them for the Preſervation of the Church her ſelf, and did endeavour to remove ſome great Prejudices and Miſtakes, that aſſiſt the deſigns of her Enemies upon her. Miſtakes to which our Enemies owe all the power they have to hurt us; in virtue of theſe Miſtakes, their malice is onely conſiderable; it could never have affected us, nor we brought within any danger or fear of them, if theſe vain Opinions had not been entertained by ſome of our Churchmen.

And

And yet two Diſcourſes ſo agreeable in all the parts thereof one to another united in Deſign, and that could not poſſibly but concur to the thoughts of any man that truly and heartily deſign'd to ſerve to the proſperity of the Church and State, are endeavoured to be ſet at variance with themſelves; and ſome there are ſo falſe and unjuſt, as to ſuggeſt, that the *Argument* for the Biſhops Right, was written to ſet off the *Poſtſcript* with ſome advantage; and that the Author deſign'd to gain from the *Argument* a more pardonable liberty of inveighing againſt the Church-men in the *Poſtſcript*.

If this had been the conceit of men of the Popiſh Faction only (and not alſo of many Gentlemen whom I principally deſigned to ſerve, and in them the Church of *England*, thereby) I ſhould not have thought it worthy my notice. For every man underſtands it is their buſineſs and deſign to divide the Church-

men from the Intereſt of the Church, to ſet the Church againſt her ſelf. To rob the ſheep of their ſhepherds and the paſtors of their flocks. They know (and true it is) that no good and uſeful Conſtitution can ever be deſtroyed but by it ſelf, *i. e.* by ceaſing to be ſo: And that the people will never part from any thing wherein they find their benefit and advantage; except they can deprave our Church, they can never hope to deſtroy her. They have corrupted ſome of our Church-men with Principles that ſubvert our Government, and betray the Rights of our people. They have debauched the Manners of our Church-men, and leſſened their Authority and Eſteem with the People. The Order is enſlav'd by Collation of Preferments upon leſs worthy men. *Qui beneficium accepit libertatem vendidit.* They have raiſed a bitter zeal againſt that Separation, that they themſelves have contriv'd, fomented, and promoted.

And

And it is brought to paſs, that thoſe are accounted *Church-Fanaticks*, though *Conformiſts*, that cannot contentedly ſee and endure the near approaches of ruine both of Church and State. Theſe are their fear and their hate. The Sons of *Anak*, the Giants of the Land, that they they imagine ſo inſuperable, that they are for making themſelves a Captain and returning back into *Egypt*. Againſt theſe they exerciſe the keenneſs of their Wit; and to ſupply themſelves with matter of Raillery againſt them, they lick up the Vomit of the Popiſh Prieſts, and whatever is malitiouſly ſaid by them againſt the firſt Reformers, is daily repeated by our young Clerks out of the Pulpit, with advantages of immodeſty and indiſcretion, for the diſſervice and diſhonour of their Order: with the impudent Lies that the Papiſts have forg'd againſt *Luther*, *Beza*, and *Calvin*, and other renowned inſtruments in the Reformation, they diſparage the Reforma-

tion: of great ſervice this to the Church of *England*, and the Proteſtant Religion. Theſe young men, like Dotterels, Apes, and Parrots, who have no more underſtanding than thoſe Animals, are perpetually repeating any thing, though never ſo deſtructive to Church and State, that is ſuggeſted by any Popiſh Mercenary Writer, if he hath but the cunning to beſtow an idle Complement upon the Church, or calls Rogue and Villain ſeemingly or in pretence for their ſake; eſpecially, if he can furniſh to their young invention any Topicks of Raillery againſt an imaginary Presbytery, and againſt Parliaments, an eſſential part of our Government, and the ſecurity of our Liberty. A very fair capacity and recommendation this (as they imagine) to Preferment. Theſe are the Men, I confeſs, for whoſe ſake I writ the *Poſtſcript*. And if it can conduce any thing either to reform them from their Errors, or elſe to make them of no regard

gard with the People. That they be not hereafter taken to ſpeak the ſenſe of the Church of *England*, and we ty'd down to certain ruine by her pretended Authority. And eſpecially that ſhe may not hereafter ſuffer under the ſcandal of ſuch forward and precocious youths. I ſay, if I can obtain by my endeavours any of theſe effects in any degree, I reckon I have performed an agreeable ſervice to the King and Kingdom.

We have a ſort of young men, that have left nothing behind them in the Univerſity, but the taint of a bad example, and brought no more Learning with them thence, than what ſerves to make them more aſſured and more remarkable Coxcombs, who will undertake to diſcourſe continually of the Intereſt of Religion, of which they have no manner of ſenſe; and of the Conſtitution of our Government, of which they are utterly ignorant.

Theſe

Theſe take our degenerate Gentlemen to be the great Supporters of our Religion and Government, whoſe Loyalty conſiſts principally in Rounds of Brimmers and Huzzahs; who have not ſo much leiſure from their repeated Exceſſes and Debauches, as to conſider that they are not the wiſer for their Cups. In theſe Loyal Debauches too many of the young Clergy do moſt ſcandalouſly aſſiſt, for the ſervice of the Church, and for maintaining the honour of their Order. This, if the Superiour Clergy do not in time redreſs, they will betray our Religion, and ruine the Government both in Church and State. Theſe degenerate Levites are magnifying perpetually the Priviledges of their Tribe, extolling their Order, yet in terms that diſgrace it, but by their Lives they vilifie it. The moſt degenerate off-ſprings of Noble Families, are the greateſt Braggadocio's of their Diſcent: Thoſe boaſt moſt of their Anceſtors, who diſhonour them by their Relation. The

The Jews did not boaſt more of their Temple, the *Templum Domini*, the *Templum Domini*, at that time when they had filled up the meaſure of their iniquity, and the deſtruction both of their Temple and Nation was at the door, (their Temple had not one ſtone left upon another, and they carried into Captivity) than theſe Gentlemen do of the Church of *England*, when Popery is like to be let in upon her, by their wicked follies and indiſcretions: Popery, I ſay, which by ſome Doctrines undermines the very foundation, and by others unroofs the Edifice, and defaces the Walls of Chriſtian Faith, and leaves nothing thereof but Altar-ſtones for their Idolatrous Sacrifices: what ever the fates will be that they are pulling down upon the Nation.

The Apoſtolicalneſs of their Order will not ſecure it, if they do not fill up the duty of their Office, no more than the *Templum Domini* did priviledge the Jewiſh

Jewiſh Church and Nation from de-ſtruction.

A Temple without a Numen, and an Undedicated Church, are things common and profane. They may remember there are Churches of Chriſt that do make a ſhift without their Order, and Religion need not periſh though the Order fail: but may ſubſiſt much eaſier than Nations under Change of Governments, which yet generally laſt longer than any one form. Nothing can ſubſiſt longer, or at leaſt to any good purpoſe, than it anſwers the ends of its Inſtitution; and if it do not, it is much better that it ſhould not continue than that it ſhould ſubſiſt.

Grotius in his Book *De Jure Summarum Poteſtatum circa Sacra*, aſſigns theſe Reaſons for the Diſcontinuance of Epiſcopacy in ſome Churches, *viz. Longa atque inveterata jam plane Officii Epiſcopalis depravatio. Nomen & Eminentia Epiſcopalis eorum culpâ quibus obtigerat omnem ſui reverentiam perdiderat, & in odium venerat*

enerat plebis. *Non debent* (ſaith he) *res onæ damnari quia ſunt qui iis abutuntur, d verſo in morem abuſu intermitti res ip- s non eſt infrequens.* The young men f the Church of *England* have their Heads filled with the Imagination of a umerous Sect of Presbyterians amongſt s, and have form'd a frightful Idea nd Character of this Imaginary Sect, as worn Enemies to the Epiſcopal Govern- ment. Whereas our old Puritans and ate Diſſenters, (I ſpeak of the groſs of hem, for they are not anſwerable for he Fools and Rogues ſent amongſt hem, or at leaſt ſpirited by the Roman Prieſts, no more than any other Party or Diviſion of men are for the Rogues that paſs under their numbers or reſpective denominations) have not diſliked the E- piſcopal Government; though by their ſenſeleſs and unaccountable ſcruples, they have depriv'd themſelves of the benefit of the Communion of our Church, and thereby give ſo much ſcandal to the Go-

vernment,

vernment, and make the Popiſh Plot conſiderable, which can no longer ſubſiſt, than they are pleaſed to continue obſtinate in their conceited follies.

They beg to be re-admitted, to have the terms of our Communion made eaſie, by relaxation of a Ceremony or two, and a few matters of Scruple: To be received again under the Governance and Guidance of our Church; and are ready to acknowledge the benefit of the Epiſcopal Order in the Church of Chriſt. Let this be askt by any man, who doubts the truth thereof, of any man that is conſiderable amongſt our unhappy Diſſenters. Dr. *Durel* in his Book called *Vindiciæ Eccleſiæ Anglicanæ*, tells what a high opinion the Reformed Churches abroad have of our Engliſh Epiſcopacy; and that the Biſhops were depoſed by them, becauſe they would not aſſiſt, but oppos'd, the Reformation, not of diſlike to their Order. Mr. *Calvin* in his *Opuſc. de Neceſſitate Reformandæ Eccleſiæ*, hath declared

clared himſelf to be of the ſame mind; *Talem* (ſaith he there) *nobis Hierarchiam exhibeant in quâ ſic emineant Epiſcopi, ut Chriſto ſubeſſe non recuſent; ut ab illo tanquam vinco capite pendeant, & ad ipſum referantur, in qua ſic inter ſe fraternam Societatem colant, ut non alio modo quam ejus veritati ſint colligati. Tum vero, nullo non anathamete dignos fatear, ſi quis erunt, quos non eam revereantur, ſummâque obedientiâ obſervent.* His very good liking and great approbation of the Order, appears plainly by the earneſtneſs and vehemency of his ſtile, whereby he expreſſeth himſelf in the matter. *Beza de Miniſt. Evangel. Gradibus, Cap.* 23. affirms. *Eſſentiale fuit, quod ex Dei ordinatione perpetua, neceſſe fuit eſt & erit, ut Presbyterio quiſpiam & loco & dignitate primus Actioni Gubernandæ præſit cum eo, quod ipſi divinitus attributum eſt, jure.* Peter de Moulin, Part. 2. Theſ. 33. *Epiſcopos Angliæ, inquit, poſt converſionem ad fidem, & Ejura-*

tum

tum Papiſmum aſſerimus fuiſſe fideles Dei Servos, ne debuiſſe deſerere Munus vel Titulum Epiſcopi. *Monſieur* Drelincourt in his Letters from *Geneva*, upon the happy Reſtoration of our King, 1660, ſaith, *Quandoquidem Germania & Helvetia ſuos habent inſpectores & ſuperintendentes, Dania vero ac Suecia ſuos Epiſcopos, non video cur quis offendi debeat quod Angliæ ſui etiam ſint Epiſcopi. Quod ſi eadem Regminis forma apud hujus Regni Eccleſias non obtineat, id ideo fit, quod non convenit cum rerum noſtrarum ſtatu, cui nihil aptius excogitari poteſt quam paſtorum æqualitas: verum ſi Deus, apud quem omnia poſſibilia, & in cujus manu ſunt Corda Regum ac populorum Monarchæ noſtro, & omnibus illius ſubditis, aut ſaltem maximæ eorum parti eam gratiam indulgeret ut reformationem Evangelicam amplecterentur, meo quidem judicio, impoſſibile eſſet inter tantum paſtorum numerum æqualitatem retinere, compelleretque neceſſitas ad inſtituendos quoſdam qui ali-*

qua

qua præeminentiâ gauderent præ cæteris, quique eorum moribus invigilarent. The great men of the French Proteſtant Church, though under the ſtate of a ſevere Perſecution, who follow the Inſtitutions of Mr. *Calvin*, do at this time applaud the Conſtitution of our Church, and ſpeak of it in terms of high eſteem and honour, as may be ſeen in the Letters of Monſieur *Moyne*, Monſieur *de l'Angle*, and Monſieur *Claude*, written to my Lord of *London*, Publiſhed by the Dean of *Pauls*, in his Book called the *Unreaſonableneſs of Separation.* Dr. *Durel*, after he hath in the aforementioned Book, ſhewed that *Geneva* was a Free City of the Empire, of moſt ancient time, That the Soveraign Authority was in the Senate of that City. That the Biſhop was Choſen by the Canons and Citizens, and Swore Allegiance to the Government before he entred the City; and that the Conſuls of the City did take his Oath. That *Petrus de*

Baulme, their last Bishop, *Anno Dom.* 1533. being detected of a design to betray the City to the Duke of *Savoy*, fled from the City; and at that time the City was, and for two years after continued, Roman Catholick; so that what wrong (if any was done to the Bishop) was done by the Papists. That two years after the Bishop fled from the punishment of his Crimes, the Authority of the Senate attempted the reformation of Religion. After this, I say, Dr. *Durel* thus concludes, *Confidenter dicam Genevenses cum Religionem emendarunt, Episcopalis regiminis ab Ecclesiâ Eliminationem, reformationis partem necessariam haud duxisse.*

Besides, all amongst us that have the name of Presbyterian called upon them at the pleasure of the Popish Faction, subscribe to the Nine and Thirty Articles, in what they declare of the Doctrine of the Church of *England* about Obedience to our King and Governours, and

and are therefore in profeſſion as Loyal as any of thoſe that boaſt themſelves True Sons of the Church of *England.*

Indeed *Scotland* hath been diſgrac'd by a vile ſort of Presbyterians, the onely true Presbyterian Sectaries in the world, in any conſiderable body or union. Theſe men have deſervedly put that name under eternal infamy, by their turbulent and contumacious carriage againſt the Kingly Authority.

But to ſpeak the truth, this is not imputable ſo much to Presbytery, as to the barbarous Manners and rough Genius of that Nation. Though it hath afforded ſome men in all Ages of great Excellency in all ſorts of the moſt commendable Qualities. That Nation was infamous for Diſloyalty, and a barbarous Treatment of their Kings, before *Buchanan* and *Knox* were born. The *Scots* boaſt of One hundred and fifty Kings in Succeſſion in that Kingdom: how many Names they have feigned to make out

the boaſt of the Auncientry of their Kingdom, we do not know; but certain it is, they really Impriſoned, Depoſed, and Murdered Fifty of their Kings at leaſt, before the time of *Mary* Queen of *Scots*, whoſe proſecution was promoted and aſſiſted by the Engliſh Biſhops. A fine Kingdom that, to make Experiments and try Concluſions upon!

There is little reaſon to charge the Guilt of the unexpiable Murder of our late Excellent King, for which at this day we are doing moſt ſevere penances, upon Presbytery, which was not thought of here in *England* till the War was begun. The heats that produced that unhappy War, were from other Cauſes and Reaſons, as every body may know. But when that War was once begun, (as no War can be managed by fore-eſtabliſhed Rules and Meaſures) it did not ſtand within the reaſons and firſt deſigns thereof, but was proſecuted and managed by ſuch means and meaſures as were

were neceſſary and poſſible. This will always happen more eſpecially in a Civil War, wherein though both parties ſhare in the Cauſes, yet the Guilt to be ſure belongs to the Rebels ſide.

The Parliament in the Courſe of the War, in their diſtreſs, prayed Aid of the *Scotch* Nation, who was ſhortly before entered into the Covenant. They refuſed them any Aſſiſtance except they would enter into that Covenant which they had paſſed upon their own people. By this accident that part of the Nation that was engaged in that unnatural War, of the Parliaments ſide, were impoſed upon by the *Scotch* Presbytery. But after the *Covenant* was thus impoſed, they ſtill retained the *Engliſh* Loyalty, filled the Town with Proteſtations and Remonſtrances againſt the Kings feared Murther; declared out of their Pulpits againſt the Actors of that deteſtable Tragedy; were continually contriving to reſtore our preſent King

to the Government of his Kingdoms; and of their inſtrumentality in his Reſtoration, the King himſelf is very ſenſible.

I wiſh the Church too were made ſenſible of the extinction of that prejudice the Scotch Covenant created againſt her; for though God be thanked ſhe hath ſurvived almoſt all of thoſe deluded Covenanters, yet the apprehenſion of the danger, or the remembrance of the evil, at leaſt, will return with the mention of that name, and render it very diſpleaſing. I wiſh, I ſay, that prejudice was removed by their frank Declaration of their good liking of her Order in general; and by their humble deſires to be ſpared in the matters whereof they yet remain in doubt, by the Indulgence of the Church: That we may not incur the danger of looſing our Religion and Government, by the ſcandal that is given to the Church-men at the old remembrance of what hath been done here by ſome that were of the Presbyterian Name.

For

For this matter of Offence they of the Popiſh Faction do with mighty advantage to their Villainous deſign cultivate and improve. They ſtigmatize all that oppoſe the Popiſh Plot, with the Name of Presbyterians, and thereby would denote them Enemies of our Church-Order.

By this means they have brought many, too many Eminent men of our Church to at leaſt a dead Neutrality, as if things were come to this paſs, that they muſt periſh either by that or the Popiſh Faction, and had nothing left them to do but to chuſe which way our Church ſhall be deſtroyed: A cold comfort this would be, that whatever way they ſhould take, they muſt aſſiſt to the deſtruction of their Order.

Upon this rock we are like to be ſplit, this makes our deliverance to ſtick in the birth, and upon this hinge the fate of our Religion and Nation will turn. Lord, what a prodigious thing is this, that

is comes to paſs in our age. *Religion it ſelf muſt be the devoted thing to the rage and folly of the Prieſts of that Religion.* Let them in the Name of God conſider what iniquity it is to declame againſt the faults of others, and not endure to hear of their own Crimes: To hate one-another for thoſe very proceedings that their own faults occaſion: where the fault is in both ſides, the fault is in neither, ſo as they may juſtly accuſe one another: and yet they will both fall under a moſt ſevere Condemnation, to be ſure, in the next world, if they do not both miſs their aims and be confounded with guilt and diſappointment in this.

I wiſh it were conſidered, that ſcarce any Nation ever yet periſhed, that was ſo blinded in her own concerns, that ſhe had not diſcerning men enough to have preſerved her from the deſtroying Evil, if many good and wiſe men did not perſwade themſelves, it was better to ſuffer it than to endeavour to prevent

it:

it: and from the fears of one Party, and the diſlike they have conceived againſt the other, determine with themſelves to ſtand Neuters, whilſt they want Reſolution to oppoſe the dangers that one ſide threatens, and think the diſorders of the diſcontents incorrigible.

It was a wiſe Law of *Solon*, *That if the Common-wealth at any time ſhould be divided into Factions, that the Neuters ſhould be noted with infamy*; by which every man was obliged to take a ſide or Party; and all the virtuous, peaceable, and modeſt, were engaged to appear openly in the concernments of the Government: he concluded aſſuredly, that by this means Peace would be more eaſily reſtored, and terms of an accommodation more readily invented and entertained; the Factious Knaves of both ſides turned out of Office, their Evil Deſigns diſappointed, and the ruine of the Nation by the Extremities of wicked men prevented.

For

For the worſt men are moſt forward in Factions, and the greateſt beautefeus moſt honoured by their reſpective contending Parties,before the wiſe and good interpoſe.

Ἐντι διχοστασίη καὶ ὁ πάγκακος ἔμμορε τιμῆς.

The Cauſes of the differences would be better underſtood , be rendred clear and conſpicuous, when the honeſt men (ſuch as can have no intereſt but the publick good, whoſe Authority is more prevalent with the people than the cleareſt Reaſon)do declare them: and thoſe that are miſ-led and abuſed into Extreams, would then unite and conſpire againſt thoſe who gave the firſt occaſion to the Diviſions, and promote them. As did the Factions of the *Colonnois* and the *Urſins* , who having diſcovered that Pope *Alexander* the Sixth ſet them ſtill at diſcord and variance amongſt themſelves, ſo by their Calamities and Falls to encreaſe the ſtrength and power of his Son *Borgia*,

Borgia, they fell to agreement among themſelves, and made head againſt him their common Enemy.

If all that are true Proteſtants, and true lovers of our Government, would declare themſelves on the behalf of our Religion and Government, in ſuch terms as befit honeſt men, and as the Exigency of our preſent ſtate ſhall require; we ſhall find the numbers of Addreſſers reduced to the Dukes Penſioners and Creatures. The number of Phanaticks made ſo few, that the Papiſts would again become the Fautors and Defenders of Fanaticiſm, as they were about ten years ſince, leſt the numbers of Fanaticks ſhould not be big enough to make a Scare-crow for the Church of *England*, or the Schiſm not conſiderable enough to diſgrace her.

All diſcerning men ſee, that the late Addreſſes have been obtain'd by application: That the deſigne therein was to make Voices for the diſcontinuance of Par-

Parliaments, and for a Popiſh Succeſſion.

If the People are pleaſed with theſe things, there is no wrong done them; and if we affect a change of our Religion and Government, it may be eaſily obtain'd.

The King hath no reaſon to conſent to diſinherit his Brother, if the People rejoyce in the hopes of ſuch a Succeſſor, or at leaſt will acquieſce under that fate: but if we would avoid it, we muſt deprecate it in ſuch applications to his Majeſty, as conſiſts with true Loyalty, and with ſuch earneſtneſs as the matter requires; and at the ſame time repreſent the ſmallneſs of the numbers of Addreſſers, and the inconſiderableneſs of their quality. Thus his Majeſty would underſtand better the Senſe of his People eſpecially when moſt of the Addreſſers themſelves ſhall, by joyning in ſuch Applications, ſhew what they meant by *Lawful Succeſſors* in their Addreſſes

An

And that when in the ſame Addreſſes they did engage to ſerve the King with their Lives and Fortunes, they did not intend to ſubject themſelves and all that they have, to his Majeſties abſolute pleaſure. In that they thank his Majeſty for his Promiſe of frequent Parliaments, they deſire them; and when they thanked him for his Promiſe to maintain the Proteſtant Religion, they deſired the continuance of it, and ſuch a Law as is abſolutely neceſſary for its preſervation. Then it may appear that the Abhorrers themſelves did not underſtand that the name of the Earl of *Shaftsbury* in the buſineſs of Abhorrence, is but like the name of *John a Styles* and *John an Oaks*, of *Titius* and *Sempronius*, in putting a fictitious Caſe: And that the onely Queſtion askt, was, *Who are the moſt damnable Plotters at this time, the Proteſtants or Papiſts?* And that this was the Queſtion intended to be put to the People in the Sollicitation of *Addreſſes of Abhorrence*, is evident. If

If we did dutifully repreſent to his Majeſty theſe Proceedings, as the Arts of our Enemies for dividing us, and the Methods of our deſigned Ruine, we ſhould not be undone; and there is nothing more than this neceſſary for the preventing of our Ruine, ſince we have ſo gracious a King.

Our King is duly ſtiled, *Pater Patriæ*; he will not ſuffer his People to be calamitous (as no good Prince can ſuffer his to be) from any cauſe whatſoever that is to be removed; no, not from their own Fears and Jealouſies, if they are innocent, reaſonable, and probable. The Affections of a Prince to his People, ſuperſede his Affection towards any private Relation: So ſtrong is the Tye of Duty upon him, from his Office, to prevent publick Calamities, as no reſpect whatſoever, no not of the *Right Line*, can diſcharge; nor will he himſelf ever think, if duly addreſſed, that it can.

By the Kingly Office, he is taken up from

from amongſt men, and is made a God to us; he is not to ſuffer the paſſions of a private man, ſo as to be ſwayed by them. In this high capacity. In the matters of the Government, nothing ought to determine him, but the Common weal, to which purpoſe all Governments are inſtituted.

Beſides, the excellent humanity of our King, which hath made his Reign ſo clement, doth diſpoſe him to a tender Affection towards his People committed to his care, and muſt powerfully incline and perſwade him to do any thing that is neceſſary for preventing ſuch Evils; which as they are greater than can be ſupported by his People, ſo if they come upon us, we ſhall never be able to emerge or recover from under their preſſures.

There wants nothing but a univerſal deſire of being happy, to make us ſo; and nothing but a declaring our ſteady abhorrence of the Evils we cannot ſuſtain,

ſtain, is further neceſſary for preventing them: Our Enemies will be deſtroyed meerly by our uniting; they have no direct Strengths of their own, all their hopes and confidence is in our Diviſions.

We may evacuate their deſigne, by making it impoſſible, without a Conflict with any of the Evils fear'd: We ſhall have no Enemies from that time we are at peace with our ſelves; if we have courage enough to ſay we are not content to periſh, we are immediately ſafe. Our Traytors would diſappear, if we had no Neuters; and we cannot loſe either our Religion or Government, if we have a juſt concern for them. If the Proteſtants would in time underſtand that the ſingle Art and Stratagem they have to undo us, is by dividing us, we ſhould not aſſiſt it by receiving falſe and hated Characters of the ſeveral Sects that are amongſt us from the Popiſh Writers; and repreſent them to our

ſelves

ſelves as more deteſtable than the Popiſh Traytors, and alike Enemies to the Government. It is no more agreeable to a ſcrupulous man about a Ceremony of the Church, to depoſe and murder his lawful Prince, than to a man of a nice Conſcience to be impiouſly wicked. Too true it is, all Nations and Religions have been ſometime or other ſtain'd with the horrid guilts of Depoſing and Murdering Kings, under a pretence of deſtroying Tyrants, and vindicating their Country from Oppreſſion. The Biſhops concur'd with the Temporal Lords in depoſing the ſecond *Richard:* In an Addreſs to that King they juſtifi'd themſelves therein, *Ex Antiqno Statuto*, from the Conſtitutions of the Kingdom; and, *Ex facto nuperrimè dolendo*, by which they meant the depoſing of *Edward* the Second. *Knighton*, one of the *Decem Scriptores* publiſhed by Mr. *Selden*, gives us the Addreſs *in terminis*. Until the Collectors of Diſſenters Sayings can

juſtifie the Biſhops in this matter, let them not trouble the world any more with the farrago of ſome of their wicked Sayings, thereof to make a Character of a Diſſenter: for it belongs no more to him, as ſuch, to be a Traytor or Rebel, than it doth to the Character of the Engliſh Biſhops to depoſe their King, and cauſe his moſt Sacred Bloud to be ſhed and profan'd as a common thing.

But for removing the fears that our cautious Church-men have of Diſſenters, which hath caſt them into a cold indifferency and inert neutrality at this time, when if ever the Applications of an active Prudence are required from all honeſt men, and lovers of their King, Country, and Religion, I wiſh they would weigh and conſider the miſchiefs on either hand: What the Popiſh Party deſignes, and what the Diſſenters would have: What powers the Popiſh Party have, what endeavours they uſe to force their Superſtitions upon us, and to change

change our Government: That the Diſſenters have neither Power nor Will to deſtroy our Religion or Government: They are already of our Church, and it is expected that they ſhould be Petitioners to the Biſhops for their interceſſion towards obtaining ſome Indulgence in ſome little matters, that may bring them into an entire Communion with us. It may eaſily be known who are for the preſervation of our Government, or diſſolution of it, by their Deſires or Abhorrences of Parliaments; (and who deſires Parliaments more than Diſſenters?) which would preſerve our ancient Government in Church and State, and the true Religion eſtabliſh'd among us, and recover us into a firm Peace and Union, by juſt and neceſſary proviſions for their ſupport. Whilſt the Government is preſerved, the Church is ſafe and ſecure: for no man can fear that the King and the States of the Realm will ever give place to wild Fanaticiſm, and

ſuffer ſo excellent an Eccleſiaſtical conſtitution as we enjoy, to be ſubverted, for any Extravagancies that ſhall deſerve the name of Fanaticiſm. But the pretences of our Neuters for their Neutrality, are not more groundleſs than their reaſonings are abſurd, by which they oppoſe the only remedies to the Evils that now beſet us, and the greater we fear.

That abſurd Opinion, *Dominium fundatur in gratiâ*, is charg'd upon thoſe that are for the Excluſion of the Duke; and they think by pronouncing this piece of abſurd Latine, they have at once put to ſilence and ſhame all the reaſons of Nature, Religion, and State, that urge it and require it.

That there is nothing can be more abſurd than that *Dogma*, will appear, for that almoſt whole Dutch Syſtems of falſe and paltry Theology go to the making of it, in the moſt tolerable ſenſe it can have; and for that it hath been im-

improv'd into a moſt villainous ſenſe, to give countenance to the vileſt Outrages of the *German* Anabaptiſts.

But *Dominium* ſignify'd Property, not Government and Rule, until our admirably accompliſhed young Divines of this laſt Age, out of their great skill in the Latine Tongue, would have it ſo, for the ſervice of the great Defender of the Proteſtant Religion, and of the Church of *England*.

All Rights, as well Natural as Civil, are forfeitable by Crimes, in ſuch meaſure and degree as Laws appoint, and as good Government requires: Notwithſtanding *Grace* be not admitted a good Title to any thing that the Saint will deſire, though of the *Roman* ſtamp.

I confeſs, Natural Rights, (but they are very few) are not controlable by Laws, but are by Laws to be defended, and the free uſe of them to be juſtifyed and allowed, moſt certainly not to be condemned by any Civil Authority.

A right in Nature every man hath to live, until he hath forfeited his Life. Whatever he doth that is neceſſary for his preſervation, is and ought to be juſtifyed by all Laws, though he kills, though he breaks the Civil Incloſure of Property; which cannot, and was never intended to ſhut out the Natural Right that every man hath in the laſt extreamities. Every man hath a right to his plank in a Wreck, though the owner of the Ship periſh by him for want of it.

All the Authority of all the Legiſlators in the world united, cannot make unlawful any Act that is done in ſelf-preſervation: *Sub moderamine inculpatæ tutelæ*, where the man is innocent.

But Civil Rights are without iniquity alterable and controleable by Laws, and by acts of Government ordainable to the publick good.

Nothing is ſo intirely, perfectly, and abſtractly Civil, as Government, the perfect Creature of men in ſociety, made by

by pact and conſent, and not otherwiſe, moſt certainly not otherwiſe: and therefore moſt certainly ordainable by the whole Community, for the ſafety and preſervation of the whole, to which it is in the reaſon and nature of it intirely deſign'd.

But we are told by ſome, that will not conteſt the lawfulneſs of *Excluſion*, That we trouble our ſelves with the fears of an imaginary danger: That we are endeavouring a remedy againſt the Evil that may never happen: That we impertinently trouble our ſelves about providing that which we may never want or need: That the Duke may dye before the King: And if the Duke ſhould ſurvive, he neither can nor will change our Religion: That it is not lawful for any man, *Occupare facinus quod timet*, and to deſtroy the perſon whom he fears.

I wiſh it were conſidered on the other ſide, That if the Duke dye before the King, there is no wrong done to the

Duke by Excluding him. It is onely his hopes and expectations that are cut off, for the preventing our fears; a poſſibility of hurt provided againſt, by ſhutting out the poſſibility of effecting it; and that not by any hurt to his Perſon, but meerly by diſabling it: a Remedy proportioned and ſuited to the diſeaſe: we deſire to be eaſed of our fears, by a juſt ſecurity againſt them. But if the Duke ſhould certainly ſurvive the King, and could and would change our Religion, they who thus diſcourſe, ſeem to allow it lawful to exclude him. But for that they ſay the Duke, if King, will not or cannot change our Religion: let every man conſider his preſent Will and Power, and how far he hath proceeded towards it, before he is entred into his Kingdom. Theſe ſilly dreamers diſhonour him, whilſt they pretend to ſerve him. His Princely Virtues make him the more dreadful to a Proteſtant Kingdom. They who thus talk, make him

a bad man of that bad Religion, weak in his conduct, and feeble in his power: But how can this be, when they have inſtructed the Nation into abſolute obedience, and have meaſured the duty of obedience by the Kings pleaſure, and not by Laws: That the pleaſure of a King is irreſiſtable; ſome of them will not allow paſſive obedience to be at all obedience?

Beſides, all caution is proportioned to the greatneſs of the Evils feared. No wiſe man ever left the ſum of his Affairs to Chance. Where the Evils are not to be remedied or reſiſted when they happen, the caution is juſt that prevents them. If there be no remedy againſt the Evil we fear, but the Excluſion, the Excluſion is not onely lawful, but commendable. And for this we have the Authority of the Illuſtrious *Grotius*, under his general Doctrine and determination, *Lib.*2. *Cap.* 1. *De Jure belli ac pacis.*

It

It is Engraven in Capital Letters upon the Foundation-Stones of all the Governments in the world, That any person unfit for Government, shall be Excluded from Governing. Though Fools cannot read it until the foundations be removed, and the Government subverted. That his Royal Highness hath rendred himself unfit for the Government, hath been declared more than once, by the unanimous consent of all the States of the Realm; and how far the King hath been of the same opinion, may be conjectured by those Expedients that have been offered in several Parliaments, by Privy-Councellors and Ministers of State, and the Dukes greatest Friends. Onely such were those of the late Parliaments that opposed the Bill of Exclusion; but even these were for sequestring the Royal and Soveraign Powers and Authorities during the Life of a Popish Successor, and to leave him content with the Name of a King onely.

An

An Indignity this both to the Name and Office: a thing repugnant to the Fundamental Conſtitutions: This tends to deſtroy the Monarchy it ſelf: It points directly to the Evils of the late times, and would make the Parliament Sequeſtrators of the Crown.

But ſuch abſurdities thoſe that appeared moſt his Friends would run us upon, rather than a Popiſh Prince ſhould become our King: Such an abhorrence they themſelves had againſt the miſchiefs that would thereupon enſue to the Nation.

Is it fit after this, that the lawful endeavours to Exclude him, ſhould be accounted a Proteſtant Plot; and thoſe that deſire it, for that reaſon onely, accounted Enemies to the Government, and Deſigners to change it? What madneſs is it, that his arrival amongſt us ſhould be welcomed with any tokens of joy! That Addreſſes ſhould be made in his favour! That we ſhould court that miſchief, that the

the wiſdom of all our Eſtates in ſeveral late Parliaments have conſulted how to avoid. To turn ſo fond of a Popiſh Succeſſor, as to be content to quit our Parliamentary Conſtitution, our Government, for his ſake: for his ſake we have had Parliaments Diſſolved, and his preſence will not give us leave to hope for a Parliament.

But let no honeſt man be affrighted and put out of Countenance with any Imputations or Reproaches of Sedition, whilſt he adheres to the Senſe of all the Eſtates in Parliament, and that which hath been in ſome ſort the Kings Senſe too.

They are the Seditious, that propound deceitful Expedients, which tend to change the Government, and to Embroil His Majeſties Kingdoms; who are contrary to the Senſe of the States of the Realm; oppoſe the voice of Nature, and the common Senſe of the whole Rational world: That are contrary to the Go-

Government, and do, as much as in them lies, go about to diſſolve it, by leſſening the Powers of Parliament, exerciſed and declar'd in their Acts; and more eſpecially in the Act of Parliament, 13 *Eliz. Cap.* 1. for that purpoſe was that declaratory Law made, to prevent our relapſe into Popery, and the return of the Popiſh Superſtition and the Roman yoak upon us.

Theſe therefore are the only Murmurers amongſt us againſt *Moſes* and *Aaron*, our Civil and Eccleſiaſtical Reformers, who brought us out of the Land of *Egypt*, and out of the houſe of Bondage, who though dead, yet ſpeak, and their Authority yet lives in our Laws, and is to be obey'd by us: we have no rules of Obedience to our Prince, but the Laws, and the Authoritative Declarations of the Government, which are called the Kings Laws, and the Kings Will and Pleaſure (whenſoever they were firſt made) in all ſucceſſion of time. Theſe Murmurers

rers are saying one to another, Let us make a Captain, and let us return into *Egypt*; and yet they rub their foreheads and say, that they are clear of the gain-saying of *Korah* and *Dathan*, and are not of the company of *Abiram*. Though if they will consider the story, they will find themselves in that company: for those that were for a Captain to return into *Egypt*, *Numb. Cap.* 14. did continue their Murmurings, upon what ensued thereupon against *Moses* and *Aaron*, headed by *Korah*, *Dathan*, and *Abiram*, *Numb. Cap.* 16. and both are remembred as one offence, *Psalm* 106.

So miserably do these men abuse their Consciences first, and then abuse the Scripture to serve their turn. The unstable more than the unlearned, wrest the Scriptures, to their own destruction. These men against all congruity and analogy, do object the story of *Korah* and his Accomplices against the Adherers to *Moses* and *Aaron*, and reproach them with

with the Names of thoſe Evil and unfortunate men, who do what they can to hinder our return into *Egypt*, and are not for this Captain of theirs.

Quis tulerit Gracchos *de Seditione querentes?*

Theſe are the moſt dangerous Schiſmaticks, a moſt miſchievous ſort of Puritans. The malignity of Puritaniſm is, to pretend to be more righteous than Laws. Where no Divine Law interpoſeth, but the matters are left by God to the prudence of Governments, and to their appointments and directions: to pretend Religion for their Schiſmatical Separations: to diſobey their Governours, when they have no command of God againſt their injunctions, though they have no Law of God for the matter injoyn'd. But the Church-Puritans have ſome pretence for their Diſobedience, becauſe Religion is certainly of Divine Inſtitution in the Subſtance and Eſſentials thereof: they pretend they keep cloſe

cloſe to the Divine Inſtitution, and they at the worſt do but prepoſterouſly prefer Sacrifice to Obedience. But this Civil Puritaniſm which we complain of, is neither Obedience to God or man, nor yet Sacrifice. Sacrifice it cannot be, where Religion it ſelf muſt be the Victim; not Obedience, but an enormous and monſtrous ſort of Diſobedience: they diſobey not to pleaſe themſelves, but for meer miſchief to themſelves; theſe are ſinners againſt their own Souls with a witneſs. By departing from the Rules of Government, they are about to betray Gods true Religion, and the Government; and they muſt become either Rebels or Slaves, either Apoſtates or Martyrs. But Martyrs if they be, it will be rather of their folly than of Religion, and God will take no pleaſure in the Sacrifice of Fools.

The wickedneſs and folly of theſe men, ſeems peculiar to this preſent age; it ſeems prepared by the Divine *Nemeſis*, to

to puniſh our prevarications from the rules and obligations of that Religion, which we have diſhonoured by our profeſſing to believe it, that ſo it and we ſhould periſh and be extinct together; that we ſhould then pretend to be conformable to the Inſtitutions of his Holy Religion, when we are in a courſe of utterly ſubverting it.

What impudent hypocriſie is this, to pretend to obey our Governours for Gods ſake, when they really are contrary to the Fundamental Conſtitutions of State, and by being ſo, aſſiſt to the Extirpation of Gods true Religion Eſtabliſht amongſt us by Law! Laws cannot be controul'd by the Princes pleaſure; they oblige when his Perſonal Commands do not. Kings cannot make their Governments other than an univerſal conſent hath made them; and ſuch we are obliged to continue them.

A man may neglect his own private right without fault, for in that he is onely

accountable to himſelf. But the Rights of the Government, the Rights of the Community can never be leſſened or neglected in their uſe, when the condition of the Nation requires their Exerciſe.

Where we have a liberty or right to do an act, a ſupervenient neceſſity makes that act our duty. When the caſe occurs wherein that right is to be uſed, and for which that Authority was created, then they that have that right and that authority, are as much obliged to uſe it, as if there had been an expreſs Law to injoyn them.

To be ſhort, I wiſh the haters of Puritans would conſider for themſelves, as well as others, that there is an *obedience of Faith*, as well as of Manners, due both to God and our Governours. That our judgments are to be form'd by the rules of right Eſtabliſhed by Law, as well as our actions to be governed in obedience to Laws commanding and enjoyning

ing them. By that Faith that every man owes to the Government, he is obliged to defend the Conſtitutions thereof: they are more properly Covenants than Laws, which yet *Ariſtotle* calls ſo; they are the *Communes Reipublicæ Sponſiones*. If we do not form our actions in agreeableneſs thereto, and comport with them in our judgments, we do not onely diſobey the Authority of Laws, but are alſo falſe Traytors to the Government, by violating our publick Faith.

And now, O ye people fooliſh and unwiſe, ye ſtupid and perverſe generation! will you ſtill perſevere to call that which is lawful, nay, neceſſary, nay, commendable and heroical, to which we are urged by neceſſity, to which we are obliged by the virtues of Religion to God, Loyalty to our King, the Faith that we owe to the Community, *A doing Evil that Good may come thereof?* Your own Condemnation muſt be juſt,

if you be detruded amongſt the number of ſtupid Sots, reckoned amongſt thoſe that have loſt their Reaſon, extinguiſhed their Faculties, ſuppreſſed their virtue, and have no other uſe of their Reaſon left them, but what is to betray them to greater Evils, as a juſt puniſhment for their former abuſing it. You perverſely and abſurdly miſ-apply words without ſenſe: To the purpoſe that you may give countenance to your impieties, your utter neglect of Gods true Religion, the ſafety of your Prince, and the publick peace, and become Traytors to God, your King and Countrey, without any ſenſe or remorſe.

I have but one Obſervation to make, and one word of my ſelf, and I ſhall conclude.

The Obſervation is this: Scarce any Government hath been inteſtinely deſtroyed, but its deſtruction was from it ſelf; which could never have hapned, if the great men had not been guilty of connivance

connivance at, and ſufferance of Evils that might have been timely prevented. And for that after the long continued ſtupidity of the upper and lower *vulgus*, which are moved by nothing but what they feel; they have grown impatient of the ſmart of thoſe Evils they could not, or would not foreſee. To this Hiſtories do give ample teſtimony, as they do alſo teſtifie, that Concuſſions in Governments, and Convulſions in State, proceed moſtly from Flatterers, incroachments of power, attempts upon the Government, and decay of Faith and Truſt in our Governours; and ſecondly, from Factious Demagogues. But theſe never appear, until the Flatterers and Projectors upon Government have firſt played their tricks: they wait as Owls for the twi-light, and Woodcocks for the winter; they are onely uſeful as revulſive remedies againſt the Evils of the other: but are without all manner of Grace, where the Govern-

ment

ment is uprightly and duely Administred. And thirdly, and principally, from the frailty of Humane Virtue. When some of better place, for the preservation of the Ancient Government, and Gods true Religion amongst us, will not endure to forego or loose some accommodations or advantages of life, which they may be well without, and perhaps do not deserve; how can it be expected that the generality of Mankind should suffer Martyrdoms in meer Loyalty, (that is) be contented to become miserable and and calamitous, and have no other payment for their miseries and Calamities they suffer, but that their Prince receives therein an imaginary pleasure, and a false satisfaction?

When all is said, men will never govern themselves by the Doctrine of the severe Casuists: But their virtue of Loyalty will bear the same proportion as their other virtues do to the Canon of Morality.

The

The beſt ſervice that can be done to any Government, is to keep it true to its own Conſtitution, good and tolerable to the People.

To this all wiſe and good men ſhould in their ſeveral places apply themſelves with Heroical zeal, a buſie care, manly and firm reſolutions; and thereby prevent, if poſſible, thoſe Evils that Mankind will not endure and ſuſtain.

If all that were diſ-intereſted from any Faction, would interpoſe with wiſe applications to ſuch purpoſes, Governments would not be ſo eaſily diſſolv'd, and Nations rendred miſerable or ruin'd. If all that are illightned, and truly honeſt, would thus dutifully behave themſelves at all times to their King and Countrey, both Demagogues and Flatterers would ſoon be aſhamed, confounded and forſaken, both by Prince and People, and Governments be of everlaſting continuance.

But

But that no man may wonder at my boldneſs, and the freedom I have uſed in theſe Diſcourſes, I have only this true account to give of my ſelf.

That Loyalty and Religion, and the Proſperity and Peace of my Countrey, have therein entirely conducted my thoughts, and guided my hand. I have therein affirmed nothing but what is publickly known for truth, and which the Cauſe I defend requires to be ſaid. It is the Cauſe of our Government, Religion, and Nation, that I advocate: The Cauſe is pleaded in its proper Court, before God and the King, Angels and Men; no other *forum* can take Cognizance of the Cauſe. To this the Writers of the other ſide hath invited us by, appealing thereto with their Reaſons. I am free from any juſt imputation of malice and contumely againſt the perſon who is moſt concerned in the right diſputed: I have conſulted therein his true Intereſt, which cannot be divided from the Peace and Happineſs of Three Kingdoms. Juſtice her ſelf will acquit me from having done any thing amiſs; and I cannot ſuffer in the Cenſures of honeſt and reaſonable men. In theſe Conſiderations I am encircled as in a brazen wall, ſafe and ſecure; for as for the fears of Rage and Injuſtice, they ſhall never affect me.

Poſtſcript.

The *POSTSCRIPT.*

SIR,

I Now render you my hearty thanks for your free advice you gave me, concerning the publiſhing of the Argument for the Biſhops Right of Judging in Capital Cauſes in Parliament, and for aſſerting their civil Honours and Rights in the Government. Becauſe it hath given me an occaſion, both of vindicating the moſt of the Inferiour Clergy from thoſe Imputations which you have remembred to me, and are commonly diſcourſed to their diſadvantage, whereby they have loſt their Eſteem with the People; and alſo of rectifying the miſtakes of ſome (for their number is not great) who have given too much cauſe therein of publick complaints.

You diſſwade me from giving any aſſiſtance to the Rights of the preſent Biſhops, for that the Clergy out of whom the Biſhops muſt be made, have entertained Principles that are deſtructive to the Government. They affirm (you ſay) *That it is in the power of a Prince, by Divine Right, to govern as he pleaſeth; that the power of the Laws is ſolely in him; that he may, if he pleaſe, uſe the conſent of Parliaments to aſſiſt the reaſon of*

his Laws, when he ſhall give any, but it is great condeſcention in Kings to give a reaſon for what they do, and a diminution to their moſt unaccountable Prerogative. You ſay, *That they are for a Popiſh Succeſſor and no Parliament, and do as much as in them lies, give up our antient Government and the Proteſtant Religion, the true Chriſtian Faith, to the abſolute will of a Popiſh Succeſſor, giving him a Divine Right to extirpate God's true Religion eſtabliſhed amongſt us by Law, and to evacuate our Government by his abſolute pleaſure.*

Our Government by a King and Eſtates of Parliament, is as antient as any thing can be remembred of the Nation. The attempt of altering it in all Ages accounted treaſon, and the puniſhment thereof reſerved to the Parliament by 25. *Ed.* 3. The conſervancy of the Government being not ſafely to be lodg'd any where, but with the government it ſelf. Offences of this kind not pardonable by the King, becauſe it is not in his power to change it. This is our Government, and thus it is eſtabliſhed, and for Ages and immemorial time hath thus continued; a long Succeſſion of Kings have recognized it to be ſuch: And juſt now, when we are under the dread of a Popiſh Succeſſor, ſome of our Clergy are illuminated into a myſtery that hath been concealed from the beginning of Governments to this day, from the wiſdom of all Princes and Miniſters of State; *That any authority in the Government, not derived from the King,*

and

and that is not to yield to his abſolute Will, was rebellious, and againſt the Divine Right and Authority of Kings in the Eſtabliſhment, againſt which no uſage or preſcription to the contrary, or in abatement of it, is to be allowed. That all Rights are ambulatory, and depend for their continuance upon his pleaſure. So that though the Reformation was made here by the Government eſtabliſhed by Law, and hath acquired civil Rights not to be altered but by the King and the three Eſtates, Theſe men yet ſpeak (ſay you) *as if they envied the Rights of their own Religion, and had a mind to reduce the Church back again into a ſtate and condition of being perſecuted, and deſigned ſhe ſhould be ſtripped of her Legal Immunities and Defenſatives, and brought back to the deplorable helpleſs condition of Prayers and Tears; do utterly abandon and neglect all the Proviſions that God's providence hath made for her protection. Nay, by this their new Hypotheſis, they put it by Divine Right into the power of a Popiſh Succeſſor, when he pleaſeth, at once, by a ſingle indiſputable and irreſiſtable Edict, to deſtroy our Religion and Government.* And theſe opinions, you ſay, they are the more inclined to entertain, for *that they believe no Plot, but a Presbyterian Plot*; for, *of them they believe all ill, and call whom they pleaſe by that hated name, and boldly avow that Popery is more eligible than Presbytery; for by that they ſhall have greater revenues, and more Authority and Rule over the Lay-men.*

This is a heavy Charge, if true; but it is imputable (I am ſure) but to a few, and not ſo generally, as ſome malevolent men of the Popiſh Faction are induſtriouſly buſie to have it. For if it were, I confeſs it might choque the conſtancy, Reſolution and Zeal of the moſt addicted to the ſervice of the Church-men, and make them at leaſt very indifferent in their Concerns. For theſe miſtakes are ſo groſs and inexcuſable, that they ought, if they could periſh by themſelves, to be permitted to ſuffer the ſmart of their own follies, and to be corrected by the evils they are drawing down upon themſelves, with their own hands. They deſerve to ſuffer as betrayers of their own Country; To be proſecuted with greater ſhame and ignominy, by all of the Reformed Religion, than the *Traditores* were by the Ancient Chriſtians: Theſe their deſerting of the true Chriſtian Faith, being much leſs excuſable than their fault that deſerved that name, and of greater miſchief, as of deeper malignity.

How many of the Clergy-men are thus miſled we know not; but they ſeem many more than they are, becauſe they are moſt in view, and come often under obſervation, frequent publick houſes, and talk loud, becauſe they want the Complement of their Preferments.

But certainly, Sir, what you ſay to be the declared Opinions of ſome Clergy-men, is the buſineſs now of the Papiſts to propagate.

Hoc Ithacus velit, & magno mercantur Atridæ.

Theſe

Theſe are agreeable to, and indeed make up the moſt modern Project and Scheme of the Popiſh Plot.

Since the diſcovery of their firſt Deſign of killing the King, and maſſacring of the Proteſtants, they have taken ſuch courage, by obſerving how little power we have to prevent their Deſign, that they have us in ſcorn, and in the vileſt contempt.

They now think that we are not worth deſtroying, but by our own hands; that we are not worthy of their trouble, or the charge of Executioners of their providing. How entertaining is it to his Holineſs, to find the Church of *England*, the impregnable Bulwark of the Reformed Religion, eaſily fall into his hands, by the unpreſidented folly of ſome of her Sons, without the trouble of attacking her either by Force or Argument, which have hitherto wanted ſucceſs, and ſuch attempts always attended with diſhonour, and miſchief to his See. How pleaſant will it be to him to ſee us periſh, and our deſtruction to be from our ſelves! With this he will anſwer all the irrefragable Apologies of the Church of *England* for her departure from the Communion of the Romiſh Church. Then he will ſay with triumph, our Church deſtroyed her ſelf, and periſhed by a *Divine Fate*, for her unwarrantable and Sacrilegious Schiſm; for ſo he will call our *Follies*, and impute them to Divine infatuations. The

manner of our deſtruction will be a better Argument, and of more force againſt the Doctrine of the Reformation, than all the Arguments of all the Doctors of that Church to this day.

For this purpoſe, ſince the Diſcovery of the Popiſh Plot, it is, that Sir *Robert Filmers* Books were Re-printed together, and recommended by the Title-Page and the Publick Gazet to our reading. Since the Diſcovery of the Plot, we have had variety of Books Printed to the ſame purpoſe; *viz. To prove that all Kings as Kings are abſolute by Divine Right.* Since the Diſcovery of the Popiſh Plot, we have had men imployed to ſearch all our antient Records and Hiſtories, to find out ſomething more antient than our Parliaments as now conſtituted, that it may ſerve as a pretence to take them away. Since the Diſcovery of the Popiſh Plot, we have the memory of our late calamitous War revived, to raiſe a Panick fear of another, and to make the King believe that the genius of the Nation is Rebellious, and that the Proteſtant Religion it ſelf is to be apprehended by Kings.

It is difficult to tell how that late unhappy War began, or how it came to iſſue ſo Tragically in the Death of the Late King; though we know how it ended; *viz.* The Nation recovered within twelve years after the moſt deplored Death of that excellent King, into a renowned

nowned Loyalty; and in ſpight of a great Armed Power, never before foil'd, ever victorious, then kept on foot for the Intereſt of a very few men, reſtored our preſent King (may his Reign be long and happy) to the Government of his Kingdoms, without the leaſt aſſiſtance of any of the Cavalier-party, and oblig'd a wary General in the head of a factious and republican Army to Loyalty.

Nay, within that time alſo, the Nation had recovered out of their partial Lapſe into Fanaticiſm, bred up great numbers of excellent Scholars, who maſtered the prejudices of thoſe times, were reverenced by the chief of the Presbyterian party, and are the beauty and ſtrength of the Church of *England* at this time.

The Presbyterians themſelves were grown reconcileable to the Church of *England*, and had learnt by woful experience the miſchievouſneſs of Schiſm, upon no better pretences than what then might have been ſatisfied and accommodated.

When the King and Church were reſtored, Fanatiſm had expired, if ſome old peeviſh and ſtiff Church-men had not ſtudied obſtacles againſt an univerſal Accommodation, and ſome crafty Stateſmen had not projected that the continuance of the Schiſm would be of great ſervice ſome time or other, to deſtroy the Church of *England*, and change our ancient Government; which is now apparently the Po-

piſh Plot; and if ever it be effected, it will be with this trick of affrighting the Church of *England* with the apprehenſion of Fanaticiſm, and making them ſuſpicious of Parliaments. As many of them as are drawn into an opinion of the diſloyalty of our late Parliaments, the illuſions of the Popiſh Plot have paſſed upon them, and they are under the power of its faſcinations. But both the *Loyalty* of the late Parliaments, and alſo *how much it imports the Plotters to have it believed that they deſign upon the preſent Government, will at once be clearly* underſtood, if it be conſidered what hath been done for the forging of a Proteſtant Plot, (which was intended at the firſt opening to extend to the Houſe of Commons). Things ſo wicked, as would make a virtuous man aſhamed of the Age he lives in. But after all endeavors to find witneſſes for their purpoſe, powerful encouragements, and great rewards, they have drawn none in to their aſſiſtance, but who are publickly known for Rogues, or who wanted Bread, or had no Reputation to looſe. If the falſhood of this forged Plot had not been utterly improbable, they might have procured better ſeeming, and more credible witneſſes. They might ſure have found in this Age men bad enough, not already infamous, to have teſtified a probable Lye. But ſo neceſſary it is to the Popiſh deſign, that a Proteſtant Plot be believed, that they are not diſcouraged at the manifeſt de-

detection of their Conſpiracies, Perjuries and Subornations; but will ſtill go on as if they had a power to work miracles of villany for their Religion, which is no better. Our modern Politicians have been moſt obſervant agreeably to their virtuous make, how frauds, perjuries and violence have proſpered and ſucceeded in ſome particular caſes, and have brought about ſome deſigns; they imagine ſuch means throughly multiplied, to be able to conquer all things which they deſign. But theſe Arts, which have had ſucceſs by the permiſſion of God, when one Villain hath been to deſtroy another, will not paſs upon the Proteſtant Religion. Let them ſeriouſly in time deſpair, and give over ſuch enterpriſes; *For there is no Enchantment againſt* Jacob, *nor Divination againſt* Iſrael, *the Lot of Gods inheritance, and his peculiar Care.* If *Mordecai* be of the Seed of the Jews, *Haman* ſhall fall before him. It is matter of comfort to us, and deſpair to the Plotters, that not one of their Plots yet, but hath proved abortive, or they have been defeated by their very ſucceſs.

Beſides, pray let it be obſerved how this Deſign of leſſening our juſt confidence in Parliaments is otherwiſe carried on and promoted. It is now become the principal buſineſs of the Mercenary Writers for the Plot, to pick up and cull out all the enormities and irregularities of thoſe times, the *Vitia temporum*, and ſtories of wild pranks of ſome beaſtly Fanatical people,

people, that exceeded the common degeneracy of thoſe ill times into which the Nation by undiſcernable degrees ſo fouly lapſed, to make thereof an ugly Vizard; and this they clap unduly upon four fifths of the Nation, upon all that love and adhere to our Government and Religion, to render them ſuſpected of deſtroying again the Engliſh Monarchy and the Proteſtant Religion, even for thoſe very proceedings that they make for preſerving both. For the ſervice of Popery requires, that whatſoever oppoſes it, muſt be branded with Treaſon and Fanaticiſm; that ſuch delicate perſons as are fond of the name of Loyalty, though they underſtand not in what it conſiſts; that hate the name of Fanatick, ſince it is become as common a name of reproach, as the *Son of a whore*, though they underſtand not ſo well what it means, may be ſure ſo to behave themſelves, as to be reckoned for Loyal and not Fanatical, by taking the meaſures of the one and the other, according to the new notion of the Plot-Writers, and ſo become theirs with all their idle prattle. But let them make their beſt of this fooliſh ſort of men, if that was all they could effect by this project.

But they deſign further upon the Nation, *viz.* to match the fears of Popery, with a fear as great of the like Evils to thoſe of Forty one; as if theſe Plotters had power by their intereſt to raiſe a new War, when we have power and authority in our Governmeut, if it were exerted,

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to deſtroy them by Juſtice. But theſe State-Mountebanks think it convenient, becauſe the Nation was caſt into a Frenzy in Forty one, therefore now, when in perfect health, we are to be caſt into a Lethargy to prevent our relapſe; and in the mean time they intend we ſhould periſh inſenſibly and quietly, that way they deſign to deſtroy us.

It is ſince the Diſcovery of the Popiſh Plot, that Popiſh Mercenaries have been hired to write virulent Libels againſt the Church, and bitter Invectives againſt Fanaticks. Out of the ſame Mint came a villanous Libel, called *Omnia Comeſta a Belo*, againſt the Church, apt to render the Church-men ſuſpicious of another deteſtable Sacriledge deſigned; and that loathſome Print entitled the *Committee*, or *Popery in Maſquerade*. Many parts whereof hath no other reaſon of belief, but that they have been the Subject of ſome drunken Rhimes in former times; but it is in the whole an inſufferable Libel againſt the Nation, by its application to this Age.

Theſe Mercenaries are the Authors as well of treaſonable Libels againſt the King, which they form ſo, as they may ſeem to come from the Fanatick party, to render the King jealous of them, as they are of the Libels againſt the Parliament and their proceedings, to breed miſunderſtandings between the King, Parliament and People.

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It is ſince the Popiſh Plot was diſcovered, that Fanaticiſm is repreſented more intolerable than Popery: That the Popiſh Plot, evident to the ſatsifaction of the King and ſeveral Parliaments, and of our greateſt Judicatures, is yet told us not to be ſo certain, as that the Fanaticks are Traitors in their hearts; though they own no principles, as the Papiſts do, that warrant Treaſonable practices. And theſe Mercenaries, as frankly as if they had for the dividing of the Nation a Warrant ſo to do, call all Fanaticks that oppoſe Popery, deſire Parliaments, and expect they ſhould uſe that power that is lodged in them, to keep out Popery, and preſerve our Government, and to bring to puniſhment thoſe wicked men that have notoriouſly deſigned to deſtroy it. The belief of the Popiſh Plot, in the mean time, is by ſcoffs and paltry Rhimes permitted publickly to be ſung in the Streets, put out of Countenance, and thoſe that believe it expoſed as a ſort of credulous Fools, or deſigning Knaves.

Such a vile eſteem the Papiſts now have of us, that they proſecute us with their ſcorn, and uſe us as if we were below their hate. They think our diviſions, which they have made, have already deſtroyed us; and they now hire a ſort of *Scaramouchy Zaneys*, *Merry Andrews* and *Jack-Puddings* to inſult over us, and make ſport at our miſeries.

Theſe

Theſe pleaſant Knaves cry with one ſide of the Face, and laugh with the other; but in the mean time they cry in jeſt, but laugh in good earneſt. He that had the art of imitating a grave Spaniard with one ſide of his body, and a brisk *French*-man on the other ſide, rendred both Nations ridiculous.

Theſe vain fellows deprave every thing they meddle with; and whatever they ſay of Church or State, Religion or Policy, is raillery and abuſe, and Pamphleting ſcurrility.

Lord, under what ſeeming fatality do we labor, that it can be thought to the Service of the Church or State, to employ ſuch Knaves!

We are uſed like *Samſon*, bound, and our Eyes put out, and made ſport for the *Philiſtims*. By theſe py'd Pipers, our young men are ſeduced, and danc'd down a precipice; though theſe merry Knaves have not skill enough to commend them for Rat-catchers, if our City ſhould be infeſted with that vermin, as they ſay the Town of *Hammel* once was. But the Dæmon that appeared there a py'd Piper, who deſtroy'd their Children as well as their Rats, was not more miſchievous to that Town, than theſe motley Knaves are to the Kingdom and Nation.

It is an inſufferable indignity, That the tragical State of our Nation ſhould become almoſt daily the matter of a Raſcally Farce; the very anguiſh and groans of the Nation turned

ed into Laughter and Mockery, such a barbarity was never used to a Nation.

It is an excess of Petulancy, to make abstract misery in the very form of it, mimically represented matter of Mirth and Laughter.

These men were born out of time, and were fit for no Age but that of *Nero*, of whose consort they should have been, when he played the *Destruction of Troy*, to the Burning of *Rome*. But I do not doubt but His Majesties Justice will e're long overtake these Incendiaries, that are so pleasant at the embroilment of his Kingdom, when it shall be duly represented to him what beauteseus they are, and unmerciful deriders of the Calamities of his People, which they occasion or promote. Tho they think they may pass any thing of this kind upon the Nation, made vain with trifling false wit and Buffoonery.

It is now Twenty years since our Nation was infected with this sort of wit, and now we are to dye of the disease. We have a Fiddle provided for us that have been bit with this venemous *Tarantula*, to dance and frisk us to our destruction, not to our cure; and yet we pay the Fidler.

This thing Wit, the greatest debauchment of this Age, hath depraved not only the manners, but the Judgment and understanding of the Nation too. It hath been accounted the best accomplishment of men in place, the best part of the Learning of this last Age: It is not the reason of the *Leviathan*, so much as the vanity of Wit, that

that hath propagated Atheiſm, and corrupted our Manners. This hath made our Judgments inſincere and trifling; our determinate reſolutions in matters of the greateſt moment, ſlight and Phantaſtical; introduc't idleneſs and neglect of ſolid Learning, which requires labour and application to obtain, while this extemporary faculty has been accounted an admired accompliſhment.

There is a ſort of Wit very commendable, which *Tully* calls *celeritas in verbis*, and the Greek Epigram, εὐσύνετος παίγνιον εὐεπίης, which is a pleaſant entertainment in converſation, and a commendable refreſhment, where our minds are tired with anxious and graver buſineſs, and the troubles and cares of humane life; but this ought to obſerve its times, its proper ſubjects; it ought to be confined to Table-talk, an evening-compotation, and the hours of mirth, and the relaxation of our mind: It may be uſed decently in a Comical Farce; but it is not allowable in *Satyr*, moſt undecent is the uſe of it in Tragedy. But yet it hath inſolently interpoſed in our Politicks, governed publick Councels, ſometimes determined debates in Parliament; hath made our Pulpits contemptible, our Theology trifling: It is admitted to reſolve the greateſt Queſtions, and determine Caſes of Conſcience, to eſtabliſh and refix Church-Government; hath uſurped an authority to alter and pull down Governments, and

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to render them tottering, when they are as firmly eſtabliſht and fixt as a Rock.

That Wit that is abhorred by all men that are wiſe and honeſt, is that verſatile ſhifting, ſquinting, diſtorting of the Underſtanding, that it views nothing truly, and repreſents things not according to their true nature, but under falſe Fantaſtical Schemes, which they affix to them, to abuſe the judgments of others: a man can never arrive to any perfection in this faculty, until he is become falſe, and loſt his truth and modeſty: none but weak men are entertained with it, and ſuch who do not deſire to underſtand truth, but to ſerve a turn, and love to be deceived, and who deceive themſelves for advantage. It is in perfection in old Knaves, and admired by young Coxcombs. It is the Hypocriſie of the Tongue, a plauſible mode of lying and ſlandering; and at beſt, but a pleaſant Knavery.

It will render ridiculous or culpable, by falſe repreſentations, the moſt noble and heroical actions, and put falſe colours upon moſt deteſtable Villanies. It can diſcredit a man by honouring him, and make a thing incredible by the very mode of believing it; making a man ridiculous, it concludes him at the ſame time unworthy; and to confute the moſt avowed Truths, there needs no more than to raiſe a fit of laughter upon it; which has the ſame effect with the men of Wit, and their vain admirers, as reducing a falſe

propoſition to an abſurdity: Thus the reaſon of this Age is governed by our riſibility. The Popiſh Writers have thus tickled us with their Wit, that we are ready to dye and periſh laughing, and we know not, nor care to conſider or judge of what does truly concern our preſervation. And by improving the vanity of ſome youngſters, they have drawn them to queſtion the Truth of the Popiſh Plot; and ſome can believe every hour of the day, when they meet with a merry Popiſh Pamphlet, that there is a Proteſtant Plot on foot; though they believe it, I am ſure, not much longer than they are reading it.

I will not grudge my pains in furniſhing a ſhort Demonſtration of the Popiſh Plot, ſince it is of ſuch importance to the ſaving of theſe men and the whole Nation, which poſſibly may fix their minds (notwithſtanding ſo vain they be) into a belief of it; which I have made ſhort, that it may be the better remembred; which I do in kindneſs to them, ſince it was lately (and may be ſo again ſhortly) a criminal matter to bring the truth of it into queſtion; and they are by all honeſt men reckoned as Plotters themſelves who doubt it.

The Plot has been declared by the Kings Proclamation, and four Parliaments, one of them conſiſting of Penſioners and Dependents on the Court, which for eighteen years together, were giving Demonſtrations of their Loyalty to their Prince, almoſt forgetting the publick

Weal: A ſolemn National Faſt has been Indicted by the Civil and Eccleſiaſtical Authority of the Kingdom, for averting the miſchiefs thereby deſigned, and ſolemnly Celebrated by the whole Nation, in which, certainly, they did not mock God, and deride his Providence.

Many unparallel'd Villanies have been committed, for the ſtifling, concealing, and ſuppreſſing the diſcovery of it, which (however wicked the Papiſtical Sect of baſe, falſe and degenerate Chriſtians are) we cannot without breach of Charity towards them, think they would commit cheaply, and without cauſe, and to no purpoſe. They have murdered a Miniſter of Juſtice, becauſe he had the knowledge of it, and left nothing undone that they thought neceſſary to Aſſaſinate another for ſtrenuouſly oppoſing it. They have attempted upon the Lives of our Witneſſes. By perjuries and forgeries they have endeavoured to charge them with the moſt infamous crimes, to deſtroy them in their Lives and Reputations too, in a form of Juſtice. They have attempted by fears and rewards upon the integrity of all our Witneſſes, to draw them to retract their Teſtimony againſt the Plot; for which ſome of their Agents have been judicially cenſured; One Gentleman to the Pillory, Find 1000 *l.* and Condemned to a years impriſonment: ſo evident and notorious was his offence, and by the Court thought ſo heinous, that it provoked the paſſion of the Court, and they ſeemed to ex-

exceed the ordinary Rules of Juſtice, for that they judged the Caſe to be of an exorbitant and tranſcendent nature.

The Plot of the *Meal-Tub* is a ſublimated piece of wickedneſs, the laſt accompliſhment of villany; it hath out-done all former, and will never be out-done in after-Ages. The Papiſts by the Diſcovery of the firſt Plot became leſs hopeful in a Maſſacre, and of effecting their purpoſe by force: They dare not now kill the King, for that the World would not now believe it to be done by Mr. *Claypole* and his feigned accomplices; which muſt have born the blame from the Papiſts, and he and they long ſince Executed as Traitors, if that part of the Plot againſt the Kings Life had not been prevented by being detected.

I ſay, the firſt deſign of the Plot being rendered leſs feaſible by the diſcovery; They keep the King alive with care, as well for their avoiding the rage of the Nation, as to leſſen the credit of the Plot: But contrive to deſtroy as many as they thought fit to be Maſſacred, in form of a legal proceſs, and to charge them with a deſign of raiſing Rebellion againſt the King. They had made a Liſt of a great number of conſiderable perſons, whom they intended to charge, principal Nobles and worthy Gentlemen about the Town; had prepared witneſſes to ſwear the charge againſt them, and would certainly with more eaſe, after the firſt Conviction and Execution, have ſworn all that

they had a mind to deſtroy into the ſame guilt. And thus all the truly Religious, the Noble, Good and Virtuous of our Nation, that had courage enough to own, aſſert and defend the true Chriſtianity, and our Government, muſt, to the eternal diſhonour of our Nation and Religion, have ſuffered the execrable death of Traitors.

We have reaſon to think them humane, when they only deſigned a *Gun-powder Treaſon*, or a Maſſacre. Our abhorrence of this uſage diſchargeth in us all reluctancy to Martyrdom: Let them bring us to the Stake as Martyrs, then we ſhall bear our Teſtimony to the truth of the beſt Religion, and our Lives will not be cheaply loſt; but by this means we muſt be forced to diſhonour this Religion by our deaths. By a Maſſacre or a Gun-powder Plot, the vileneſs, cruelty and treachery of that Apoſtate Church, had been declared to all the World, and that falſe Religion, as well as the profeſſors of it, had been rendered deteſtable, for which end a good man would ſcarce refuſe to dye. But by this means they would have forced us to perſonate their own proper Crimes and Villanies, and diſhonour our own peaceable and holy Religion. A man of Honour prefers his Honour to his Life, and would redeem it by his Death: But by this means we were, though innocent, to loſe our Lives by diſhonour, and to faſten a ſtain upon our Memories by our death. The Prieſts, their impudent Lyes at their deaths,

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in denying the matters of the Plot, of which they were upon clear evidence Convicted and Sentenced, muſt have paſt for truths; and all our worthy men dying with proteſtations of their innocence, muſt to the everlaſting infamy of our Religion and Nation, been accounted falſe and impious at their laſt breath. There is no reaſon to be aſſign'd of the patience of God or Man towards ſuch miſcreants, but that they may have time to add one impiety to another, until an eaſie vengeance triumphs over them.

And though this laſt mentioned Plot is cleared beyond all exception, their Faces are hardned, and they are not yet aſhamed; but they have ſince contrived and ſuborned Witneſſes to ſwear the very Diſcovery of the firſt Plot to be a falſe contrivance of a Plot againſt the Papiſts. To this purpoſe they ſuborned a Son by perjury to commit parricide againſt his Father; this the greateſt Sin againſt Earth, the other the greateſt affront againſt Heaven. What a Religion is this, that muſt be thus ſupported!

Nay, as if they did not fear or care to looſe the favour of their moſt indulgent Prince, which they have poſſeſt ſince he uſed Papiſts in making his eſcape at *Worceſter*; they have contrived theſe two laſt Plots with ſuch Art, as to bring them under his Majeſties Obſervation, and repreſented them as things fit for his encouragement. Sure if they were not urged

with the fears of a real guilt, and a reſtleſs Conſcience of the Plot, they would never have adventured thus to have intereſted the honor of the King, and to tempt him to abandon them to the publick Juſtice of the Nation; which begins to grow impatient, by the delays of it againſt this Helliſh Plot.

For we have had four Parliaments diſſolved ſince the Diſcovery of it, one a darling to the Crown. The bringing into queſtion the Diſſolution of that Parliament in the Houſe of Peers, upon the reaſon of an unnatural Prorogation, was not long before cenſured, and ſome great Lords impriſoned therefore; proceedings ſo unwarrantable, that it was after thought fit by that Houſe to obliterate the Memory of them; ſo neceſſary was that Parliament then thought to the ſervice of the Crown. The Diſſolution of that Parliament, gave us reaſon to fear that the King had no more buſineſs for Parliaments. By theſe Diſſolutions, no publick ends that are intelligible are ſerved, no Intereſt but that of the Plot is gratified; no perſons of any ſort receive their ſatisfaction but the Plotters, who are reſpited thereby from publick Juſtice, and gain time to bring their Plot to effect.

This is the end the Papiſts have ſerved; but the King, our great Phyſician of State, had another reaſon that hath governed him, for he knew the ſtrength of the Plot, our Diſeaſe, and that a Diſeaſe that is dangerous, is ſometimes

to

to be palliated, until the ſeaſon comes to make a thorow Cure; for it many times kills the Patient to precipitate the Criſis. All theſe Demonſtrations of the Plot are paſt under every mans obſervation.

But that we know ſo little of it after all this time: It is now above three years ſince the firſt diſcovery. That the Plotters now ordinarily eſcape Juſtice. That a great Judge did abate his firſt Zeal in puniſhing the Plot, leſt he ſhould exaſperate it, and Reaſon of State might thus require it. Theſe things prove the greatneſs and ſtrength of the Plot, as well as the reality of it; theſe declare the Plotters intereſt is great, that the Plot is yet unbroken, ſtanch and hopeful.

Therefore we are not to believe our ſelves well, and live *ſine Regimine*, as the Phyſicians ſay, but to expect, addreſs to, and deſire our Cure.

That the Papiſts think it yet hopeful, is evident from the Prieſts and the Lawyer abjuring their guilt with their laſt breath. We had the honeſt Confeſſions of the Convicted Prieſts and other Traitors of the Popiſh Treaſons of which they ſtood Convicted, in the time of Queen *Elizabeth*; and in the time of King *James*, of the Gun-powder Treaſon. What then could induce our Plotters Convict, to utter moſt ſolemn Perjuries the next minute before they were to appear to God? nothing ſure but that they then hoped that the Plot might

be executed; they did it for the intereſt and ſervice of their Church, and for the better bringing that Plot to effect for which they dyed; and for which at their deaths, to conceal, they adventured Heroically upon lyes and perjuries; which if confeſſed, would have been fruſtrated and become Abortive: For it muſt not be believed that even that Church is ſo degenerate, as to permit and allow men to ſuch impieties, for the punctilio's of honor, though of the Church it ſelf. But while they are not done for the ſake of him that commits them, but for an important intereſt of their Church, (ſuch as the carrying on of this Plot) they ſay they looſe their nature by the direction of the intention, they become a pure piece of mortification and ſelf-denyal, an adventure to truſt God in what they do for his ſake, and for his ſervice; and their Caſuiſts will no more call them in this Caſe lyes or perjuries, than *Abraham*'s offering up his Son *Iſaac* (though that was at Gods expreſs command) was murder. But the God of Truth, that God who hath declared, that when he himſelf in any entercourſe with Mankind interpoſeth an Oath, that the matter under that Oath is irrevocable, peremptory and abſolute, cannot licenſe or diſpenſe with perjurious falſhoods for any end whatſoever.

But I muſt remark one thing more, and that is, touching the credit of Dr. *Titus Oats*, and Capt. *William Bedloe*, viz. That they have been incurious

incurious in their converſation, have followed their own natural courſe, allowed themſelves in their paſſions, have been apert and unreſerved, have not cared who they offended, have ſought no mans favour, ſeem to care for no mans opinion, have valued and ſupported themſelves onely by their veracity, and have ſeemed to ſet all the world at defiance to find a flaw in their evidence, and have had little of friendſhip or eſteem, but for the ſake of their diſcovery. Beſides that ſo long a time hath not afforded a poſſibility, by all the Artifice, Intereſt and unhallowed frauds of *Rome*, to falſify any one part of that evidence. But numberleſs events have given credit and authentickneſs to their Teſtimony. Did ever any feigned Teſtimony bear it ſelf up with ſo much Confidenee, Bravery and Aſſurance? was there ever any falſe witneſs that did not endeavour to render himſelf acceptable, to beſpeak favour, which draws after it credit, and to appear of the moſt unexceptionable behaviour? Their faults and imprudences, ſuch as they have been, we would not have wanted, to make their evidence beyond all exception.

The undoubted truth of their evidence alone, hath given them the civil reſpect of all honeſt men, and will give the Doctor the publick honours of the Nation in due time. I will not recite the innumerable Sham-plots contrived againſt the Proteſtants, every one of them a Demonſtra-

monſtration by it ſelf of the truth of the Popiſh Plot, becauſe I have no deſign to exaſperate, but awaken theſe men that are aſleep and ſecure in this ſtorm.

This trouble of demonſtrating of the Plot, may ſeem unneceſſary to the judicious, nay, to the plain ſort of honeſt, upright, and well-meaning men; and ſo it would certainly have been, had not ſome young Gentlemen, by this paltry thing called Wit, been corrupted in their judgments, and brought into a Scepticiſm, and wild undetermination in a matter of ſo great concernment.

This deſpicable faculty hath made a famous Gentleman, who hath a liberal Doſe of it, a Writer of Books, cauſed him to waſte ſo much Paper, and abuſe ſo many Readers; but in all that I have read of him, there is nothing true and ſincere, or truly and ſincerely ſaid; his Judgment is made falſe by his Phantaſie, or he hath ſerv'd a turn by his Verſatile windings and Wily conceits. That dangerous faculty that he indulgeth, hath impoſed upon him, which the ſevere and honeſt enquirers after truth are concerned to mortify and ſupreſs. And I do earneſtly recommend to all ingenious Gentlemen, that would be rightly inſtructed and informed, neither deceive others, nor would be deceived themſelves, as they love truth and virtue, wiſdom and ſober thoughts, to deſpiſe this ſort of wit in others, and repreſs it in

them

themſelves. And never allow it to be uſed, but in the hours of mirth, in the Relaxations of their minds from ſerious Contemplations and matters grave and weighty, where this prophane thing *Wit* ought always to be ſhut out with care.

Enough hath been ſaid for rectifying the miſtakes of any true Proteſtant, eſpecially any Clergy-man of the Church of *England*, which you have objected againſt them about our Government or Parliament, Diſſenters from the Church of *England* and Popery. Eſpecially, when it is made apparent that theſe miſtakes are made ſerviceable to the Popiſh Plot, and the means which the Popiſh party proſecute to compaſs and bring about the ruine of our Church. But that nothing may be wanting, that lies in my poor power, for pulling their Foot out of the Snare, I ſhall more diſtinctly conſider them.

Firſt, I ſhall deſire them to conſider what our Government is, and where the true knowledge of it is to be found. And where can it be found, but in our Statute-Books, the Commentaries of our Law, the Hiſtories of our Government, and of the Kingdom.? Search them if you be at leiſure; if you are not, conſult thoſe that have read them, and whoſe buſineſs and employment it is to underſtand them, and you cannot fail to be informed.

That the King hath no power to make Laws, that

that both Houſes of Parliament muſt joyn with the King in making a Law.

It can with no more reaſon be concluded that the King hath the Legiſlative Power, becauſe his Aſſent makes the Bills in Parliament Laws, than it can, becauſe the third Unit added to two makes a Triad, that the other two do not go to the making of that number.

When a matter's moved from the King in Parliament to paſs into a Law, the Commons conſent laſt. The Letters Patents of *Ed.* 3. for making the Eldeſt Son of a King in Succeſſion Prince of *Wales* and Duke of *Cornwal*, was confirmed (as they muſt have been, otherwiſe they would have been void) by the Houſe of Commons.

Sir *E. Cook* 8. R.

And yet we will not ſay, that the Houſe of Commons can make a Prince of *Wales* or Duke of *Cornwal*. And yet upon no better reaſon than this, ſome men will talk as if they believed themſelves, that the Legiſlative power is in the King, when no King of *England* yet ever pretended to it; but by their proceſs of Law have puniſhed ſuch officious and miſchievous Knaves.

They alſo will tell you that, the Laws are the meaſures of our Allegiance, and the Kings Prerogative, and declare the terms of Obedience and Government.

That a Legiſlative authority is neceſſary to every Government, and therefore we ought not to want it; and therefore Parliaments, in which

which our Government hath placed the making of Laws, cannot be long diſcontinued, nor their Conventions rendred illuſory and in vain, which is all one as to want them.

That to Govern by Laws, implieth that great fundamental Law, that new Laws ſhall be made upon new emergencies, and for avoiding unſufferable miſchiefs to the State.

By the Statutes of 4 *Ed.* 3. *c.* 14. 36 *Ed.* 3. *c.* 10. it is provided that Parliaments be holden once every year. The Statute of this King required a Parliament every three years; which being an affirmatory Law, doth not derogate from thoſe of *Ed.* the 3. But if the King doth not call a Parliament once in a year, he neglects theſe Laws; and if he delays calling a Parliament three years, he neglects the other Law of his own time too. And for that he is by the Law intruſted with the calling of Parliaments, he is at liberty to call them within the times appointed.

And that Laws ought to be made for Redreſs of miſchiefs that may enſue, appears by the Statute of proviſors, 25 *E.* 3. *cap.* 23. In which we have theſe words:

Whereupon the Commons have prayed our ſaid Soveraign Lord the King, that ſith the right of the Crown of England, **and the Law of the ſaid Realm is ſuch, that upon the miſchiefs & Dammage which happeneth to this Realm, he ought and is bound of the Accord of his ſaid People in his Parliament thereof, to make Remedy and Law in avoiding the miſchief and damage, which whereof cometh:**

which

beth Mure. After that by one Act of Parliament, he made his natural Children firſt Noble, that is to ſay, *John* Earl of *Carrick*, *Robert* Earl of *Menteith*, and *Alexander* Earl of *Buchquhane*. And ſhortly after, by another Parliament, he limited the Crown in Tail Succeſſively, to *John*, *Robert* and *Alexander* his Children by *Elizabeth Mure* in Concubinate, and after to the Children of *Eufame Roß* his Legitimate Children; who are to this day in their Iſſue by this limitation, by authority of an Act of Parliament in *Scotland*, barr'd from the Crown; and we hope ever will be, by the continuance of the Line of our moſt Gracious King.

Note, that though a ſubſequent Marriage by the Civil Law, which is the Law of *Scotland*, in ſuch caſes, doth Legitimate the Children born before Marriage of a Concubine; yet it is with this exception, that they ſhall not be Legitimated to the prejudice of Children born *afterwards* in Marriage, and before the Marriage of the Concubine. Beſides, the reaſon of the Civil Law in Legitimating the Children upon a ſubſequent Marriage, is this, *viz.* a preſumption that they were begotten *affectu maritali*; which preſumption fails, where the man proceeds to Marry another woman, and abandons or neglects his Concubine.

But I deſire theſe Gentlemen that are ſo unwilling to be ſafe in their Religion, which I believe is moſt dear unto them,

That if any Law ſhould exceed the declared mea-

meaſures of the Legiſlative Authority, though in ſuch caſe they may have leave to doubt of the lawfulneſs of ſuch a Law, yet if it be not againſt any expreſs Law of God, they will upon a little conſideration determine it lawful, if it be neceſſary to the Commonweal; for that nothing can be the concerns of men united in any Polity, but may be governed and ordered by the Laws of their Legiſlature for publick good: for by the reaſon of all political ſocieties, there is a ſubmiſſion made of all Rights, eſpecially of the common rights of that Community, to the government of its own Laws.

But all this, and a hundred times as much, will not ſatisfie ſome Gentlemen of the lawfulneſs of our Government, and the extent of the Legiſlative power of Parliaments, ſince they have entertained a Notion, that Monarchy is *jure divino*, unalterable in its deſcent by any Law of man, for that it is ſubject to none. That all Kings are alike abſolute. That their Will is a Law to all their Subjects. That Parliaments and the States of the Realm in their Conventions, can be no more than the Monarchs Miniſters, acting under and by his appointment, which he may exauctorate and turn out of office when he pleaſeth: For there can be (ſay they) under the Sun no obliging Authority but that of Kings (to whom God hath given a plenitude of power) and what is derived from them. That this divine abſoluteneſs may govern, and exerciſe Royal Power im-

menſely, and that it is not ſubject to, nor to be abated or reſtrained by any humane inventions or contrivances of men: (however neceſſary and convenient Kings have thought them in former Ages) by ſuch methods and ſuch Offices and Officers (of which number the States of the Realm may be, or not be, as Kings ſhall pleaſe) as they ſhall by their abſolute Will order or appoint. *Our Parliaments*, ſay they, *are Rebellious, and an Uſurpation upon the unbounded power of Kings, which belongs to every King as ſuch*, Jure ordinario, *and by Divine inſtitution: That a mixt Monarchy, as ours is, is an Anarchy; and that we are at preſent without a Government, at leaſt ſuch as we ought to have, and which God hath appointed and ordained for us: That we by adhering to the preſent Government, are Rebels to God Almighty, and the Kings unlimited Power and Authority under him, which no humane Conſtitution, no not the Will and Pleaſure of Kings themſelves can limit or reſtrain, for that*, jura ordinaria & divina non recipiunt modum: *That the Legiſlative Power is ſolely in the King, and that the buſineſs of a Parliament (if they would think of being onely what they ought to be) is onely to declare on the behalf of themſelves and the People (that ſend them for that purpoſe certainly) the obedience that is due from them to ſuch Laws as the King ſhall make, and that they may be laid aſide wholly when he pleaſeth.* And after all this, what matter's it with them what we ſay our Government

vernment is, hath been, or where the Legiſlative Authority of the Nation is placed, or how uſed?

But I deſire theſe Gentlemen to conſider how they come to theſe Notions, upon what reaſon they are grounded. How a Government eſtabliſhed by God and Nature for all Mankind, ſhould remain a ſecret to all the wiſe, good, juſt, and peaceable men of all Ages. That Kings ſhould not before this have underſtood their Authority, when no pretences are omitted for increaſe of Power and enlargement of Empire. I deſire them to conſider that this ſecret was not diſcovered to the World before the laſt Age, and was a forerunner of our late unnatural War; and is now again revived by the republiſhing of Sir *Robert Filmer*'s Books, ſince the Diſcovery of the Popiſh Plot.

I wiſh they would conſider, that the reaſons ought to be as clear and evident as Demonſtration, that will warrant them to diſcoſt from the ſenſe of all Mankind in a matter of ſuch weight and moment.

That to miſtake with confidence and overweening in this matter, will be an unpardonable affront to the common ſenſe of Mankind, and the greateſt Violation of the Laws of modeſty. I deſire that they would conſider, and rate the miſchiefs that will certainly enſue upon this opinion, and whether a probable reaſon can therefore ſupport it.

That they would throughly weigh, ponder, and examine the reaſons of theſe bold and new *Dogmata.* For their enquiries ought to be in proportion diligent and ſtrict, as the matter is of moment; and if they are not, their errour and miſtake will be very culpable, and the ſin of the errour aggravated to the meaſure of the miſchief which it produceth and occaſioneth.

Where is the Charter of Kings from God Almighty to be read or found? For nothing but the declared Will of God can warrant us to deſtroy our Government, or to give up the Rights and Liberties of our people. If they are lawful, I am ſure it is villany to betray them, ſince all political Societies are framed, that all may aſſiſt the common Rights of all. I cannot imagine they can pretend an umbrage from the holy Scriptures for ſuch unheard-of Opinions.

The Jews indeed had a Government, and Laws of Gods framing and appointment, and a King of their own chuſing; and ſuch a King as they deſired, by Gods permiſſion they had: But their form of Government ought with leſs reaſon to be the rule of all kingly Governours, becauſe it was a Government choſen by themſelves: then the Laws of the Jews ought to be the Laws of all Nations (which they are not) though made and enacted by God himſelf.

Chriſt would not make himſelf a Judge in a private

private Right ſubmitted to him: He determined the right of the Roman Empire by the poſſeſſion of Soveraign Authority; and ſuch as the whole world had made it; his Diſciples were obliged to acknowledge it, by their obedience and ſubmiſſions, which is the ſum of the Apoſtles Doctrine in this matter.

The Chriſtian Religion inſtituted no form of Governments, but enjoyns us to be obedient to thoſe we have, not onely by expreſs command in the caſe, but by its general Rules of a moſt refined, improved, and extenſive morality.

But though I ſaid the Scriptures have not preſcribed or directed any univerſal Form of Government, yet the Scripture hath declared the falſhood of this new Hypotheſis of Kingly Government to be *Jure Divino*, or by *Divine Right*: For St. *Peter*, 1 *Peter* 2. 13 and 14, ſtiles Kings, as well as the Governours under him, the ordinance of man, which cannot have any other ſence, but that men make them, and give them their powers. By St. *Paul* the power of Government indeed is called Gods Ordinance, *Romans* 13. 2. but that is for this reaſon, becauſe in general God approves of Governments as neceſſary to the well-being of Mankind, for the improvement of humane nature, for the puniſhing of Vice, encouragement and ſecurity of Virtue; without them it being impoſſible to live honeſtly and in peace. And he hath made them the under-Miniſters of his pro-

vidence and care over Mankind, and expects of them, that they ſhould promote his true Honour and worſhip in the world, which will be always accompanied with the exerciſe of all civil virtues.

Theſe two different places muſt be ſo underſtood, that they may be both true; and by no other interpretation can they be reconciled and made conſiſtent.

It is impoſſible that any thing can be of mans appointment, which is of Gods Ordination; there can be no ſuch thing as a Co-legiſlative power of Men with their Maker. Government therefore is from God, as he hath made Governments neceſſary in the general order of things; but the ſpecification thereof is from men. The beſt definition that can be made of Government, is in the words of both the Apoſtles put together, θεὸς διατάξῃ, Ἀνθρωπίνη κτίσις, and ſuch Governments which men make, God approves, and requires our obedience to them, upon all thoſe reaſons which make Governments neceſſary.

The natural and eaſie conſequence and reſult of theſe Scriptures, is this; which I deſire thoſe Gentlemen to obſerve: That whatſoever is not lawfully eſtabliſhed by men, no Law of God, not the Chriſtian Law, doth oblige us to obey.

The Chriſtian Religion doth equally condemn, in the reaſon of its Inſtitutions, Uſurpation, and Contumacy. Where the Apoſtle admoniſh

moniſheth us, that if we be free, we ſhould not become Servants, he hath by virture of that Admonition, made it commendable not to ſuffer the encroachments of Power over us. Moſt certainly therefore, as the Chriſtian Religion doth not prejudice the Soveraign Rights of Princes, ſuch as they are in the ſeveral Forms and Models of Monarchical Governments, *non eripit terreſtria, qui regna dat cœleſtia*, as Sedulius; ſo doth it not enlarge them: when by the Goſpel God made us free from his own poſitive Laws to the *Jews*, ſure he did not intend thereby, *de Jure*, to render us Slaves to the Arbitrary pleaſure of men.

No man intends by any thing in the Scripture, that all Mankind is obliged to any one Form of Government, and therefore all men are left to their own. It hath not therefore altered the terms of Government and Obedience that every Nation hath eſtabliſhed for themſelves, but hath confirmed, and ſtrictly obliged the obſervance of them.

To Obedience to Government, we are obliged by as many ties as there are Chriſtian Virtues; and he muſt diſown his Chriſtianity, that departs from his due Allegiance. And ſince our Saviour is declared King of Kings, and Lord of Lords, all Chriſtian Kings are to govern in imitation of his mercy and goodneſs, and in ſubſerviency to the intereſt of his Religion and Kingdom.

Regum timendorum in proprios greges,
Reges in ipſos imperium eſt Jovis,
cuncta ſupercilio moventis.

Whence then is this abſolute Authority of Kings, if it come neither from God nor man?

Give me leave now to inform you, that theſe opinions render you all Traytors, guilty of Treaſon of State, *perduellionis rei*, obnoxious to be puniſhed as Traitors by an Authority lodg'd in Parliament, in the Conſtitution of the Government.

You your ſelves muſt needs condemn your ſelves to have forfeited all your own, who hold ſuch Principles that tend to deſtroy every mans Right, by reſolving all things into the abſolute pleaſure of a Monarch; in which you moſtly diſſerve the King, and are contrary to his Majeſties late Declaration. The men of theſe Principles, the leſs of the Goverment they are intruſted with, the better; for the leſs they have to give up and betray. I confeſs, if I could believe that this Doctrine was become Orthodox among them, and the prevailing opinion of the Clergie, I ſhould conclude us to be the moſt unhappy people under the Sun. This is an Hypotheſis indeed, that will bring on *new Heavens and a new Earth*; but ſuch wherein no Peace or Righteouſneſs can ever dwell. But I deem all ſuch as are Defenders and Promoters of it, do deſerve a civil Excommunication, more ſmarting than their Eccleſiaſtical; and to be condemned

to

to live upon, and onely feed themſelves with their thin and crude Speculations. To be excluded from any ſhare of that Government that they profeſſedly in their Principles betray. To be puniſhed as ſeditious perſons, and moſt miſchievous Schiſmaticks, far more intolerable in this matter, than the ſcrupulous Brotherhood, for their boglings at an indifferent and inſignificant Ceremony. For that to the ruine of our Religion, and deſtruction of the publick Peace, they divide from that polity, to which by drawing here their firſt breath, they made Faith; and to which the condition of their birth doth oblige them; they falſifie that which *Arrian* in his *Epictetus* calls the ἀπαγγελία ἀνθρώπου, than which nothing is more ſacred and inviolable.

By creating themſelves a new Allegiance, and obtruding it upon their fellow Citizens, and Members of the ſame Kingdom, they ſet up a Kingdom within a Kingdom, more dangerous and miſchievous than the Papal *Imperium in Imperio*; which certainly will be introduced, if this Modern and monſtrouſly-extravagant opinion can prevail by a general Credence.

It is criminal, and no leſs dangerous to the being of any Polity, to reſtrain the Legiſlative Authority, and to entertain Principles that diſable it to provide remedy againſt the greateſt miſchiefs that can happen to any Community. No Government can ſupport it ſelf without an unlimited power, in providing for the happineſs

happineſs of the people: No Civil eſtabliſhment but is controlable and alterable to the publick weal. Whatever is not of divine Inſtitution, ought to yield and ſubmit to this power and Authority.

The Succeſſion to the Crown is of a civil nature, not eſtabliſhed by any Divine Right. Several Kingdoms have ſeveral Laws of Succeſſion; ſome are Elective, others Hereditary, under ſeveral Limitations. All humane Conſtitutions are made *cum ſenſu humanæ imbecillitatis*, under reaſonable exceptions of unforeſeen accidents and emergencies that may happen in humane affairs; and ſo they muſt be intended, and ſo interpreted. The ſeveral limitations of the deſcent of the Crown, muſt be made by the people in conferring the Royal Dignity and Power, which is more or leſs in ſeveral Kingdoms. And the deſcent of the Crown in particular caſes, is governed according to the preſumed will of the People; and the preſumption of the Peoples will, is made by meaſuring and conſidering what is moſt expedient to the publick good; whereas private Eſtates are directed in their deſcent according to the preſumed will of the Decedents. And this is the reaſon that the deſcent of the Crown is governed by other rules than private Eſtates. Onely one Daughter, and not all, as in private Eſtates, ſhall ſucceed to the Crown, becauſe the ſtrength of the Kingdom is preſerved when continued united, and the peace and concord of the people better

better eſtabliſhed. A ſon of the ſecond venter ſhall inherit, which is not allowed in private Eſtates; becauſe a ſon of the ſecond venter is equally of the bloud of the great Anceſtor, upon whom the Crown was firſt conferred by the people, or after he had got into the Throne obtain'd their Submiſſions, and may equally participate of his virtues.

If the Royal Family be extinct, it belongs to the people to make a new King, under what limitations they pleaſe, or to make none; for the Polity is not deſtroyed if there be no King created; and conſequently, in caſe of this ceſſer or diſcontinuance of the *Regnum*, there may be Treaſon committed againſt the people. By all which it is evident, that the Succeſſion to the Crown is the peoples right: And though the Succeſſion to the Crown is Hereditary, becauſe the people ſo appointed it, would have it ſo, or conſented to have it ſo; yet in a particular caſe, for the ſaving the Nation, the whole Line, and Monarchy itſelf may be altered, by the unlimited power of the Legiſlative Authority. We have been more juſt to the Royal Succeſſion, than the wonderful Sir *Robert Filmer*; for his Hypotheſes will not allow at all of Hereditary rightful Succeſſion: For he, eſtabliſhing the right of the univerſal Empire of the World in *Adams* right Heir, ſince this Illuminato hath enlightned the world in this ſecret, no Succeſſor can, according to his Doctrine, derive any hereditary right from his Predeceſſor. His title can be only his own poſſeſſion; for no man can claim

claim by deſcent the Uſurpation of his Father, but he that is not conſcious to the wrong, and is *bonæ fidei poſſeſſor*, under the preſumed right and title of his Father. I would be underſtood to ſpeak as the matter can be conſidered in a free reaſon, not under the prejudice of any poſitive municipal Law; for to ſuch Laws the right of Crowns, as the renowned Knight will have it, are not ſubmitted.

So that here in this matter their Knight fails them, and can give them no help. Their other friend, the great *Leviathan-maker*, is ſo far from eſtabliſhing an Hereditary Succeſſion, that he leaves Kings to be rightfully aſſaulted, depoſed, and deſtroyed by any perſon that can, who ſtands in danger of being deſtroyed by the King, though juſtly condemned to death; *Leviathan*, Part 2. cap. 21. *Thoſe* (ſaith he) *that have committed a capital Crime for which they expect death, have the liberty to defend themſelves by Arms, as well as the Innocent.* But I mention him onely to render him deteſtable; for I take his Books to be the *dehoneſtamenta humani generis.*

But I deſire them to regard the ſence of all Mankinde, in the words of *Iſiodorus Peluſiota*, ἐυσεβούνη καὶ Βασιλεία εἰς ἓν ὁρῶσι τελος τὴν ὑπηκόων σωτηρίαν This governed the Judicious and Learned Dr. *Falkner*; for when he had carried Chriſtian Loyalty as high as he could, to the honour of our Religion and the benefit of the world, for which we are all extreamly beholden to him,

him, he concludes thus in his excellent Book, called *Chriſtian Loyalty*, (viz.) *That if any Prince undertakes to alienate his Kingdom, or to give it up into the hands of another Soveraign Power, or that really acts the Deſtruction, or the Univerſal Calamity of his people*; Grotius *thinks that in his utmoſt extremity, the uſe of a Defence, as a laſt refuge*, ultimo neceſſitatis preſidio, *is not to be condemned, provided the care of the Common Good be preſerved.* And *if this be true*, ſaith he, *it muſt be upon this ground, that ſuch attempts of ruining*, de ipſo facto, *include a diſclaiming the governing of theſe perſons as Subjects, and conſequently of being their Prince or King.* What unreaſonableneſs is there then in ſhutting the Door upon him, and making it faſt againſt him by an Act of State, who hath excluded himſelf by his principles and deſigns? For the truth of the fact, I ſhall onely refer you to his Secretary *Coleman* his Letters, wherein he ſaith, *That his Maſters intereſt, and the King of* France *his intereſt, is one and the ſame, and their deſign, their glorious deſign, the ſame*, (viz.) *the extirpating the Northern Hereſie.* How far the King of *France* hath complied with the deſign, the cruel Perſecution and Exiles of his Proteſtant Subjects (who at the time of that Letter were under the ſecurity and protection of the Laws of that Kingdom, and the faith of that Crown) do declare to the world. And by what ſecret influences I know not, he is made ſo great, his Conqueſts ſo eaſie and expe-

dite,

dite, that he is like to do the work himſelf here in *England* too, and go away with all the Glory. But if the work muſt lie upon our hands, let no man think with himſelf that Popery is not to be introduced here, becauſe the numbers of Papiſts are few; for that will not render the deſign impracticable, but the execution of it more cruel and barbarous; a whole Nation upon the matter muſt be corrupted from the Faith of the true Religion, or deſtroy'd. One ſingle arm of an ordinary ſtrength, not reſiſted, may aſſaſſinate a whole Nation.

Let no man betray his Country and Religion, by pretending the example of the patience and ſufferance of the Primitive Chriſtians for our rule.

The Reformed Religion hath acquired a civil right, and the protection of Laws: if we ought not to loſe our Lives, Liberties, and Eſtates, but where forfeited by Law, we ought much rather not to loſe them for the profeſſion of the beſt Religion, which by Law is made the publick National Religion. And it is ſtrange that ſome men of the ſame Religion in profeſſion, can think (that notwithſtanding) it makes no matter what is done to men if they be Religious; but if they be not ſo, the leaſt publick injuries and injuſtice threatned or done them may be reſiſted, vindicated, remedied, and by right defended by old Laws, or new ones to be made for that purpoſe.

The Chriſtian Religion was publiſh'd when the

the whole world was Pagan, and therefore it was ſubmitted to ſuch uſage as the Governments would give it. But when the Chriſtian Faith had by miracles of patience declared it ſelf to be of Heaven, and of a divine Original; according to the Propheſies on that behalf, it took poſſeſſion of the Empire; Crowns and Scepters became ſubmitted to the Croſs; The Chriſtians acquired a civil right of Protection and Immunity, which they ought not, they cannot relinquiſh and abandon, no more than they can deſtroy themſelves, or ſuffer Violence and Cruelty to deſtroy the Innocent. Such as thus periſh, ſhall never wear a Martyrs Crown, but periſh in the next world for periſhing in this. This will be interpretatively Crucifying Chriſt afreſh after he is received up into Glory, *i. e.* after his Religion is exalted into Dignity, and Honour, and civil Authority. If the Senate of *Rome* had been Chriſtians, they would never have given up the Government to a Pagan *Auguſtus*, with a power to him and his Succeſſors to make Laws for extirpating the Chriſtian Faith.

What is ſaid of the Chriſtian Religion and Paganiſm, holds between the Reformed Religion and Popery.

If any man is ſo vain, as to ſay, that an unalterable courſe of Succeſſion to the Crown is eſtabliſhed amongſt us by Divine Right: I ſay, he is a man fitted to believe Tranſubſtantiation, and the infallibility of the Pope; he is deeply lapſed into

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Fanaticiſm, he dreams when he is awake, and his Dreams are Dreams of phrenſie. There are ſome things ſo falſe, that they cannot be diſproved, as ſome things are ſo evidently true, that they cannot be proved. This Propoſition hath no colour to ground it ſelf upon, no medium to prove it, no argument for it which is to be anſwered; nor is there any thing more abſurd than it ſelf, to reduce it to. But if any ſhall adde, that this Doctrine is the Doctrine of the Reformation, and adventure to tell the people ſo; they are the moſt impudent falſaries that ever any Age produced; when there is ſcarce a Child but hath heard what was done, ſaid, and maintained by the Clergie of *England* in the Caſe of *Mary* Queen of *Scots*, a *Popiſh Succeſſor*, in the earlieſt time of our Reformation here in *England*.

Our Age is bleſſed with a Clergie renownedly Learned and Prudent: By the Providence of God, and the Piety of our Anceſtors, they poſſeſs good, though not to be envyed, Revenues and Honours.

It is ſcarce poſſible they ſhould have many among them that can countenance a propoſition ſo wickedly impious and ſacrilegious, *That we cannot have new Laws for the preſervation of our Religion, but muſt loſe the old at the pleaſure of a Popiſh Succeſſor*, againſt not their own intereſt, and the Rights of the Church, but againſt the Rights and Liberty of Religion it ſelf. For ſhe is capable of Franchiſes and Immunities, which ought

ought above all things to be moſt zealouſly aſſerted and defended by her Miniſters. Can they themſelves with their own hands ever pull down her Hedg and deſtroy her Defenſatives, and expoſe her helpleſs to the rage of her implacable Enemies, and ſuſpend all the Legal ſecurity ſhe hath for her preſervation, upon the Life of our preſent King, whom God long preſerve? If Kings be admitted to have a power to make Laws, one Proclamation may eſtabliſh the Popiſh Religion amongſt us; which the Papal Bulls, ſo long as that See continues, will never be able to effect.

Next to Religion her ſelf, the Revenues of the Church challenge their faithful care, for they are at beſt but Uſu-fructuary Truſtees of her Endowments for the Succeſſion, which they will wretchedly betray to an Arbitrary Succeſſor, if they do not repreſs ſuch Opinions that pretend to change the Government into an abſolute *jure Divinity Monarchy*, which will leave nothing *jure divino* but it ſelf and the Popedom. Kings for their ſo doing have the authority of Sir *Robert Filmer*, who affirms in his Treatiſe called the *Power of Kings*, Fol. 1. *That the Laws, Ordinances, Letters Patents, Priviledges and Grants of Princes have no force but during their Life, if they be not ratified by the expreſs conſent, or at leaſt by the ſufferance of the Prince following, who had a knowledge thereof.* This is but the neceſſary conſequence and reſult from the Doctrine of the abſolute power of a Prince;

for in ſuch Government the Conceſſions of a Predeceſſor can no more oblige the Succeſſor, than he can Govern when he is dead; and the Succeſſor muſt be abſolute in his time, as the Predeceſſors were in theirs. But in vain is the Net ſpread in the ſight of any Bird; this deceit is of ſo groſs a thread, that it cannot paſs with the common people, much leſs upon our Clergy.

But I will not diſſemble what may be the true reaſon of the ſeduction of ſome young good-natured Gentlemen of the Clergy.

It is thus they perſwade themſelves, that if theſe principles and opinions of the *Unlimited Power of Kings* had been received, the late Wars had been prevented: Not rightly conſidering, that if ſuch opinions had never been broached, or Univerſally rejected, that War could never have enſued; and we ſhould together with peace have enjoyed our ancient Government which our Anceſtors tranſmitted to us, without that miſerable *inter-regnum*.

I would not be perverſely underſtood by any man, as if I went about to juſtify our late War: This is all I ſay, that every Government once eſtabliſhed will continue for ever, if all the parts of it would unalterably conſent to preſerve it, to which their natural Allegiance doth oblige them: And never any Prince endeavored to change the Government, but where part of the people were firſt willing, or content to have it ſo.

Thoſe

Thoſe falſe flatterers that go about to remove the boundaries of power, and change the Government, are the greaſt enemies to the quiet and happy Reigns of Kings, and the peace and proſperity of Kingdoms.

And if they do adventure to call their fellow-Subjects by any opprobrious names of diſloyalty, becauſe they will not joyn with them in ſuch change, they are as abſurdly impious and inſolent, as any Prince or State would be, who ſhould challenge another, as free and abſolute as himſelf, for his Tributary and Vaſſal; and traduce him for a troubler of the World, becauſe he would not Compoſe the Quarrel, thus injuriouſly ſought, with the ſurrender of his Crown and Dignity.

I deſire theſe Gentlemen to conſider, that the happineſs of a Nation is beſt ſupported with Truth and Juſtice: This new Doctrine is not true; and whoſoever entertains a belief of it, is not onely barely miſtaken, but will be led by the miſtake, into the moſt miſchievous, impious, and ſacrilegious injuſtice and treachery.

It is very agreeable to a good man, to embrace a propoſition with an eaſie belief, that offers the leaſt ſeeming probability of a ſecurity againſt the miſeries of War, by all means to be avoided. But this Doctrine of the *Divinity* of Kings, is moſt dangerous to the Peace of Kingdoms, for it is pregnant with Wars: Beſides that it will give bad Princes, which ſometime

hereafter may be Born into the World, (for ſuch there have been now and then) power to make their Reigns worſe than War, and Plague and Famine to boot.

The Panick fear of a change of the Government, that this Doctrine occaſioned, and the Diviſions it made among us, was the principal cauſe of the late War.

It is not without reaſon, that, together with theſe new principles, revived ſince the Diſcovery of the Popiſh Plot, we have a perpetual din and noiſe of *Forty one*.

Then that fatal War began, which proceeded to the deſtruction of the Prince, and ruine of the Church and State: The remembrance of it is the principal matter, that ſtuffs our weekly Pamphlets; and it is brought into common diſcourſe, and grown ſo trival, that it is mentioned and heard without abhorrence and regret: And what Service this can be to His Majeſty, I do not underſtand; much better it were, that the memory of it were utterly extinct and aboliſhed for ever, except onely in the Anniverſary of that great Prince that ſo fell. Then, I ſay, and then onely, is it fit to be remembred, when we are on our Knees to God Almighty, and in his preſence affecting our ſelves with ſorrow and remorſe, deprecating the like Judgments, and bewailing the National Sins that occaſioned thoſe: For notwithſtanding the Glories of that Great Prince his unhappy death, and the admired

admired Devotions of the Εἰκὼν Βασιλικὴ, The ſtory of the Calamities of his people, (all his three Kingdoms involved in War during his Reign) and the remembrance of them, will be with ſome Men not very Loyal, a ſtain and diminution to the Glories of the Royal Family. In Princes, their Calamities are reckoned amongſt the abatements of their Honor; and meer misfortunes are diſgraces, and have the ſame influence upon the minds of the common people, as real faults and male adminiſtrations.

How then can this tend to the peace of the Nation, or the Honor of the King? what ſatisfaction is it to have our almoſt-healed wounds, thus perpetually rub'd and kept green?

------- *Quis ſua vulnera victus*
commemorare velit -------

Why ſhould any of our Nation inſult over the miſeries of his own and neighbour Kingdoms, when he muſt be the moſt barbarous villain, and have deveſted himſelf of all humanity, that is not deeply empaſſioned at the remembrance of them? If a *Thuanus*, or a *Philip de Comines* were to paſs a Judgment of the condition of our late times, upon the conſideration of our late Tragedies, and The Preludium's to it in the Reigns of King *James* and the late King; it would be formed and pro-

nounced in these words of *Tully*, upon another occasion:

Mihi quidem, si proprium & verum nomen vestri mali quæratur, fatalis quædam calamitas incidisse videtur, & improvidas hominum mentes occupavisse, ut nemo mirari debeat humana consilia divina necessitate esse superata.

But this is not all,

------ *Nec Dum finitur Orestes.*

We are affrighted by the weekly Pamphlets, with the expectation of another Parliamentary War; and this is the true reason of the mention of the late War, that we may forgo our Parliaments for fear of another. So it is written in our publick Prints, which are published under permission, as if Parliaments are designed to be rendered hateful, and to be feared as Plagues, Famines, or Inundations of the Sea.

But who is to begin, who designs this War, the Pamphleteers, or those that set them on work, best know: We had never heard of any such thing, if the Mercenary writers of the Popish Faction had not told us of it, as they do weekly: and hitherto we cannot find any Colour for this affrightful Lye; they are impudent so to talk of it as if they believed it, and have brought some as weak men, as they are false Knaves, to a belief of it: But to do them no wrong, those may best know what is to come

to paſs, who have the power of contriving and deſigning.

Qui pavet vanos metus veros fatetur.

The vileſt Traitors cannot contrive a greater prejudice to the King and his Family, than by advancing ſuch a diſmal thing into credit and belief: for fears, though but upon imaginary and falſe grounds, produce real effects, as well as they are in themſelves really afflictive; and that almoſt equally, if of continuance, to the evils feared. Do theſe men ſpeak like true Loyaliſts, that are mentioning perpetually the Calamitous War in the time of our Kings Father, and fright us with another now enſuing; after thoſe Univerſal, Solemn, and hearty Joys of the whole Nation for his Reſtauration, after ſo many Millions of Money moſt dutifully iſſued out of the affections of his people from time to time at His Majeſties Royal pleaſure, and nothing complain'd of, but that they have not opportunities of iſſuing ten times more, to the ſervice of His Majeſties Glory? Nay, they ſpeak of this enſuing War, as if the Royal Standard was already diſplayed, and the Rebels had made their Muſters; which muſt certainly affect the Royal Family with the greateſt danger.

If there were twenty *Trajans* derived from one ſtock, that had Reigned in an uninterrupted Succeſſion, Two immediate Succeſſours, that

ſhould have their Reigns ſucceſſively attended with civil Wars, were enough to efface their own, and the glories and merits of ſuch Anceſtors. But baſe Caitiffs, you can no more truly believe the laſt Parliaments deſigned upon His Majeſties Crown and Dignity, to make War, and change the Government, than you can believe that every Mothers Child of them, before they came up to the laſt Parliaments, ſet his Houſe on fire and burnt his Wife and Children.

But theſe impudent Forgeries againſt the Houſe of Commons, are contrived to make the people afraid of Parliaments; that this new model of Government in proceſs of time, when we have an enterpriſing Succeſſor, may take place, for the ſervice of the Popiſh Religion. For upon the ſtrength of Dr. *B-----s* performance, who hath with great labour found out (which it is hard for any man acquainted with our Engliſh Hiſtory to be ignorant of) that our Parliaments were not always ſuch as now conſtituted; This bleſſed change of our Government will never be atchieved. The Nation will never be perſwaded, by any thing that he hath found out in his diligent reſearch, that the Houſe of Commons is an *overgrown Wen*, an unnatural Accreſcency to the Government, and fit to be cut off, if that which is offered in the Argument to conſideration be duly weighed. Neither can the moſt inſolent Paradox of Sir *Robert Filmers Patriarcha*, contribute much to this purpoſe. But for that I have in my

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Argument too forwardly deſpiſed it, conſidering that many have conceived a favourable opinion of it, that it may be able to deceive but a very few for the time to come; for the ſake of ſuch Gentlemen who have not choſen their ſide, are glad of the leaſt Colour or dream, of a Shadow, a ſingle opinion of any body, it matters not whom, to relieve their modeſty in their notorious defections from Truth, Juſtice and the Government; I ſhall here conſider his Hypotheſis, eſpecially for that it was Re-printed, and is magnified by the *Factors* for the Popiſh Plot.

And firſt, I will draw it out ſhortly, in all its ſtrength, and make it more argumentative than he hath left it, (for he hath left his willing Readers to find out the Argument, and to make the Concluſion). *Adam*, ſaith he, *was the Father of Mankind; that to him as Father, belonged an Abſolute dominion over all his deſcendents; that all Men being ſo born, are born under ſubjection to ſuch an Authority: This Authority ſo reſerved upon us by God, and the condition of our birth, and the manner of coming into the World, is to be ſubmitted to, in the perſon of the preſent King, who by becoming King, is for that reaſon veſted with this Abſolute Authority. This power, and the duty of our ſubjection to it, reſults from our being Born, and coming into the World, after the manner of men.* This power of Kings is grounded (by him) meerly upon this natural reſultance, and not from

from any positive and expreſs Revelation from God, for ſuch, neither we, nor he, yet ever heard of.

We will now then conſider, what there is of weight in this fictitious Reaſon of Government, in which the World is ſo lately illuminated by this Speculator; what force there is in it to unravel all Models of Government that are framed in the World, to confound Kingdoms and Nations, and to give Warranty to the bringing upon us all the miſeries that are deſigned by the Papiſts for us; which we are to be prepared to ſuffer, with moſt conſcientious patience, from the comforts and ſupports of this inſolent and vain pretence.

I appeal to the Reader of him, whether in thus ſtating his Doctrine, I have not made it more Argumentative and concluding to his purpoſe than he left it: I will take this method of remonſtrating the futility of his *Hypotheſis*,

By conſidering what a Father is, and what his Duty towards, and Power over his Children; in which it will be found, that nothing of Empire belongs to him as Father; that no more belonged to *Adam* over his Children, than did to any of his Children over their own.

That the Authority of Parents over their Children, continues together with Soveraign power, and is not at all abated by it; and that it cannot

cannot be the ſame, becauſe it continues entire with it.

That there is no footſteps in the Records of the Old Teſtament, to verifie his *Hypotheſis*; that we could not have wanted ſome Declarations about it from God, (if true) it being a matter ſo neceſſary for us to know, That no claims were made, (that we know of) to any ſuch authority in the earlieſt times, when the Right was unprejudiced, and muſt have been beſt underſtood, and could not have been forgotten, as now it is utterly.

Beſides that it was never uſed. The firſt Hiſtories Recorded in the Bible, make every Child of the common Anceſtor alike independent and abſolute, and ſo it would for ever have continued: And to this day we ſhould have been in the ſtate of Nature, and not United in any Government, and ſo no King yet in the World, notwithſtanding the Paternal Authority. That his Inſtances of exerciſing Soveraign power by the Fathers of Families, are not concluding, and to his purpoſe.

That admitting *Adam* had while he lived been Univerſal Monarch, (yet if there be no other reaſon and Foundation of Monarchy in the World, but this of Sir *Robert Filmer*) *Adams* right heir not being known, (and if he were, might perhaps be an Ideot or Lunatick, ſome Cobler or Botcher under a Stall, or mean Perſon unfit to govern) we can have no right-

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ful King in the World: for certain it is, that there is nothing in the World so personal as Relations, and the duties and Rights that do result from them: For they are neither assignable to, nor can be exercised or exacted by and between any persons, but the Relatives themselves: So that this power of Sir *R. F.* hath no foundation of reason in the nature of things, was in Fact never exercised, and is now utterly fallen to the ground, and all Government with it. A more puzled, vain, senseless and unlearned Paradox, was never yet offer'd to the World, nor a thing more mischievous ever received. For first, the absolute Power of a Prince over his Subjects, is not at all connatural to the dutiful Care of a Father over his Children.

It was the good pleasure of God that this part of the immense world should be planted with men endowed with a Capacity to admire his Power, Wisdom, and Goodness, and therefore to render him praise and worship: he design'd that we should be happy in our own enjoyments, and promote the happiness of each other; which is not to be performed, but by a mind serene, beneficent, and Loving. He provided that the dissieminations of Love should run parallel, and be under a like necessity with the propagation of our kind. For the planting Love in our Nature, he instituted Marriage for Procreation, that we might owe our Being to the state of the greatest and most agreeable friendship, and

and tendereſt affection. That for many years we ſhould be educated by a pure, ſingle, and undeſigning love of our Parents: and the friendſhip of that conjugal State, ſhould be maintained by, and principally exerciſed in, their common care of their Iſſue.

Every Act of Love of either of the Parents to the Child, being the beſt inſtance of love to the other of them; an endearment of reciprocal love, and a provocation to the like love and care of the Child. And for this love the Children naturally pay a return of an affectionate honour to their Parents; and by that honour which we ſo naturally render our θνὸι ἐπίγειοι, our Earthly god, swe are initated, trained up, & inſtructed devoutly to worſhip our heavenly Father. God did likewiſe ordain, and ſo it was, that all Mankind ſhould derive from one ſtock, be made of one blood, and every Man every Mans Brother, of the ſame Family and cognation. By this it was provided by the Father of us all, that we ſhould be born into the World, under the tendereſt care for our preſervation, and improvement of our Nature; be powerfully enclined to love and beneficence; whereby we may be pleaſed with our ſelves, and at Peace and Amity with our whole kind; and diſpoſed to celebrate the infinite Wiſdom and Goodneſs of our Almighty Creator, with moſt affectionate Praiſes.

That the Generations of Mankind might certainly proceed, God planted in our Natures powerful

powerful and irreſiſtible inſtincts to procreation, which the *Jews* call a Precept, tho after this no Precept ſeem'd neceſſary, for encreaſe and multiply they make a Command. But we follow our own propenſions, and have no conſcience of obedience to a Law, when we obſerve and follow them; which are ſo ſtrong, pleaſurable, and entertaining, that if God had not planted a reſtraint of Modeſty in our Natures, and a ſenſe of decency, we ſhould over-do the buſineſs, and degrade our ſelves from the dignity of our Natures.

Thus far the Parents are fulfilling Gods appointments, and gratifying their own Natures. What from all this can give them a right over their Child? All men coming into the world this way, are no leſs free, than if they had been form'd in *Lucretius* his Bottles, and drop't out of his imaginary matrixes, and we were all αὐτόχθονες & Aborigines.

In this they are onely executing the appointment of God, are but his Inſtruments to bring us into this World, and are all along rewarded and entertained, and careſſed by the order of Nature. *Adam* ow'd this duty to God his Father; and ſo ordered it was, that he ow'd it to himſelf, and to his own natural propenſions, pleaſures and ſatisfactions to propagate.

The ſeveral ſucceeding generations of men, as ſoon as they are men, have as much Right to the enjoyment of themſelves to the freedom of their

their own Will, and to live by their own measures, as *Adam* himſelf had. Our Parents do not give us life, but hand it to us from the fountain of being, the Univerſal Father of all things.

Vitai Lampadu tradunt.

And this is allowed, acknowledged by all Mankind: for aſſoon as Children can Govern themſelves, we declare them free, that they are *ſui juris*, they are extrafamiliated, and become themſelves Fathers, and acquire to themſelves.

The Jews, who had a Kabala of the trueſt and moſt antient Theology and Morality, beſt underſtood their own Laws, and were furniſhed with the knowledg of what Power and Authority Fathers had over their Children, whether by nature, or by vertue of the fifth Commandment, did take their Sons to be *ipſo jure* Emancipated and *ſuæ poteſtatis* as ſoon as they were *pubertatis plenæ*: The time of which they reckoned, at the fartheſt, when they were 13 years, 3 months and one day old. And therefore whereas it was one of the Laws of *Moſes, Deut.* 21. *v.* 18, 19, 20, 21. *That the ſtubborn and Rebellious Son, at the Complaint and Proſecution of the Father and Mother, was to be judg'd to be ſton'd to death*; They ſay a Son was not under this Law until he was 13 years and one day old: for until that time he was not *Filius præcepti*, not bound to any Laws: As

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not until that time presum'd of competent discretion, consideration, or conscience, to make him a Transgressor, or Breaker of a Law. But three Months after, they reckoned him compleatly adult, upon a general Presumption: when (and sooner, if he were sooner adult) he was free from the Power of his Father, and could not incur the mentioned Law, which condemns the rebellious and stubborn Son to be stoned to death. *Maimonides Tract. Memarim.* But the Father who struck the Son, after he was adult (the Jews tell us) incurred Excommunication, for that he offended therein against the Law, *Levit.* 19. 14. *Thou shalt not put a Stumbling-block before the Blind:* By which Precept they understand all things indecent and dishonest to be forbidden. By which it doth appear, that the Jews did not take their Children to be longer under the authority of their Fathers, than until they commenced, in the soonest account, Men. Besides, that Law of *Deut.* Chap. 21. seems to be onely a permission of an unnatural kind of severity to the offended Parents, at whose suit onely the punishment of that Law could be inflicted; such a sort of permission and liberty it was, as was indulg'd to them in the matter of Divorce.

But that which hath imposed upon this Gentleman, I believe, is, for that while they are to be educated, Parents exercise an Authority over their Children, which a sowre Father may imagine to be Power. This I believe

lieve gave the Gentleman his maſtake, becauſe he ſaith a Child and a Slave doth not differ; which is a ſhrewd indication that he was ſomething too maſterly over his Children. But all equal parents know and underſtand that the Education of their Children is duty and care; and it may, not improperly, be called a Sort of Generation-Work.

For I pray let it be conſidered, That the fœtus is not perfected aſſoon as it is extruded the Matrix, no not until it be able to perform, unaſſiſted, all the Actions of its proper life. That the life of a man is a life of Reaſon. That he cannot do the Acts of a man until he hath it in the exerciſe of it. He is not a perfect fœtus, ſo as to be neglected by his parents, as ſoon as he can feed himſelf: the man after this may miſcarry; and after this, if expoſed by his parents, and not continued under their care, be abortivated. Education is a kind of Incubation. Our faculties are to be formed and drawn out into uſe, as well as our body to be organized, before we can be denominated men. While this is accompliſhing, the parents are but executing the natural inſtinct of propagating their like; until they have made them men, they are not begotten in their own likeneſs. They therefore with an eaſie propenſion, and a natural care, do apply themſelves to offer things to their obſervation, to furniſh their Memories, to try their judgments in little Eſſays, to render them diſcourſive, to draw out their faculties into uſe, until by little

and little they arrive at diſcretion, and a power to form true judgments of what belongs to them, and to govern themſelves in ſuch Affairs and buſineſſes that are to employ them.

But while this is a doing, they are under a Government of love and care, by the Arts of Diſcipline to be trained up to perfection. Several freakiſhneſſes and caprices are to be cured, and the ſtrength and luxuriancies of ſeveral natural Appetites are to be abated and reſtrained; and they are to be held to attention and obſervation, and made patient of inſtruction: correction is to be adminiſtred to theſe purpoſes, and by theſe meaſures: but this duty of Correction doth not participate any thing of the Nature of Civil Government. It hath nothing of the Nature of puniſhment, exemplarity, or vindicative Juſtice.

It is not for the gratifying of the Parents diſpleaſure to ſecure him againſt wrong or injury, to deter others, but to amend, improve, and better the Child, and always terminated to, and directed to that end; and by thoſe meaſures it is tenderly and affectionately adminiſtred.

It will not be impertinent to obſerve, that our Common Law had no opinion of any Soveraign Authority in a Father. And alſo that the Statute of 25 *E.* 3. which declares petty Treaſons as well as high Treaſons, doth not declare the ſons killing the Father to be Treaſon, tho Treaſon it is

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for a Servant to kill his Maſter. In which we have the Authority of our Parliament, and of the conſtant opinion of our Judges. That the nature and relation of a Father and a Son, doth not ſavour any thing of Government, or of a ſervile or Political ſubjection; For that they have not made Parricide Treaſon, though it is the moſt unnatural and moſt deteſtable Crime, and a far greater ſin than that of killing a Maſter.

But further, to clear the true notion of a Fathers Authority, that it is duty and care, not Empire and abſolute will; Let it be conſidered, that God by his right of Creation hath an abſolute, plenary, and direct dominion over us; we are more his than we are our own, or than any thing can be ours Yet when he was pleaſed, of his gracious condeſcention to our capacity, to quiet our fears of his power, and to invite our love, and aſſure our hope, he did declare himſelf our Father, thereby to aſſure us, that he would not rule us *pro imperio*, and according to his abſolute right he had over us. That ſtile he himſelf delights to uſe, and gives us leave to call him our Father; by which we all underſtand, that he will not proceed with us according to his Right of abſolute domination, no not in the terms of ſtrict Right and Political Juſtice: But that he will conſider our frame, pity our infirmity, correct us as his Children, but not puniſh us with an exterminating Juſtice.

Amongſt the *Romans* antiently no man was admitted a Judge in Criminal Cauſes, but he that was a Father of Children; that the ſeverities of a Judge, might be abated by the tenderneſs of a Father; that he who had Children of his own, might have the more pity to thoſe of others; ſo different is the Office of a Judge, from the natural duty and tenderneſs of a Father. It is the greateſt violence that can be done to Nature, to compel a Father to ſit in Judgment upon his Son. Next to that of obliging and compelling a man to execute himſelf, to make it the Fathers duty to pronounce a capital Sentence upon the Son, is the moſt unnatural thing in the world. The Father and the Son in this conſideration are *conjunctæ perſonæ*; and when the Sin of the Father is viſited upon the Son, the Son is afflicted, but the Father is puniſhed; and when the Son hath the *Queſtion*, the Father is taken to be confeſſed *in tormentis filii.*

But for a further inſtance to make it appear how incompetent the duty of a Magiſtrate is with the Nature of a Father, I will obſerve, that notwithſtanding a Law was given to *Adam* and all his Sons, to eſtabliſh Judicatures according to the Tradition of the *Jews*, as may be ſeen in Mr. *Selden* his Book *de jure Gentium ſecundum Hebræos*; which Law by the way had been ſupervacaneous, if the Power of a Prince did belong to *Adam* in the right of his pater-

paternity, and a Government had been provided for them by their Birth. Yet, I ſay, notwithſtanding that, there was ſuch a Relaxation of Juſtice in the World before the Flood, becauſe it could be onely adminiſtred by a Father, or ſuch who participated of the ſtock of love lodg'd in the common Father, from whom his Children did derive their tenderneſs one to another, as they themſelves ſprang from him. That the World was grown ſo wicked with in two ages (as men then liv'd) from the creation, that a Univerſal deluge was brought upon the World, by the juſt Judgment of God, for the outragious and inſufferable Wickedneſs that had ſpread it ſelf univerſally over mankind, 8 perſons onely excepted. The overflowing deluge of Wickedneſs, that caus'd the deluge of waters, can't be imputed to a more probable cauſe, than to the indulgence and impunity that the obſerved and underſtood nearneſs of Kindred that all men ſtood then in to one another muſt naturally occaſion.

This is a ſad conſequence of that natural Love in Parents towards their Children, which was intended for the propagation and advancement of Mankind. But ſince that now we are eſtranged one from another in remote and unknown degrees, and that prejudice is over; Here is a Gentleman, to deſtroy the World another way, and to undo us by unreaſonable and unbounded power, (wich is alike apt to make the World fit for another Univerſal deſtru-

ction, if it be not without more deſtroyed by it) doth endeavour to turn the exerciſe of ſuch power into a Right, and to give it warranty from the Reaſon and way of our propagation; and by this means to deſtroy us faſter than we can be born and bred, and impair the Generations of Mankind, to render them extreamly miſerable, or wicked, which is much worſe; extinguiſh the light of the world, which is Love and Amity; and deſtroy the encouragement and reaſon of almoſt all relative Morality.

What a Saturnine Father have we got, to make a golden Age! who ever would have thought, that the שפעת the moſt moving, kindeſt, moſt tender, pleaſing, and beneficent inſtinct in Nature, planted by God the Father of us all, for the propagating, educating, and improving humane Nature, ſhould ever be made uſe of to found a Right of Tyranny, and Arbitrary domination, the greateſt deſtroyer and depraver of Mankind? What Monſter hath this laſt Age produced! a Chriſtian, a Father, ſeriouſly endeavouring to perſwade all Mankind to offer up their Children to *Moloch* the Saturn of the Eaſterlings, who was but the Devil of Tyranny, as the name imports!

This שפעת the true Origine and Fountain of Love and Amity, and the ſocial Virtues which render men humane, from whence flows

flows all the happineſs of Mankind, will by this Doctr ine be corrupted and rendred unſincere and ſelf-deſigning. For when a Father performs an Act of Generation, it ſeems now he deſigns to add a ſlave to his Retinue; and when a Child is horn, there is another *Item* added to the Inventory of his Eſtate. If this Fountain be corrupted, there can be nothing ſincerely kind after it in Humane Nature. The *Leviathan* is out-done by this Gentleman, and hath not performed half ſo renownedly in the great Work of depraving Humane Nature, as our Patriarchal Knight will do, if his Admirers can bring him into vogue and eſteem.

For the Author of the *Leviathan* allowed ſomething good in Humane Nature, ſeveral equal propenſions, which he terms her Counſels, and ſometimes adventures to call the Laws of Nature: But he conoludes they are not practicable, and they are onely fools who govern themſelves by them.

But this Gentlemen will not allow Nature to be good in her firſt inſtitution and deſignment; though in this I think they are near agreeable, that Mr. *Hobbs* made the Pourtriature of Humane Nature in an agreeableneſs to his own evil Ingeny; and this Knight did ſet himſelf: when he made this his draught of a *Father*, he could have no other Original but himſelf, or the Idea of themoroſe and ſour D r. *P. H.* his admired friend; but by his Character he had at leaſt

misfigured his underſtanding, and made it his own Nature by liking it.

2*ly*. No more of authority belong'd to *Adam* over his Children, than does to any of his Children over his; for that this Authority proceeds from Nature, and Nature is alike in all men. The duty of their education, and the Authority over them that is competent to that purpoſe, is as much belonging to them, and incumbent upon them, as upon the Protoplaſt. The duty is ſo perſonal, conſiſting ἀφ' ἑαυτῷ, that it cannot be transferred, or permitted abſolutely to any other perſon by the Parents; nor can any man challenge a right to it, or diſcharge the Father from it, or require the ſame affection, ſubmiſſion and reverence that is due from a Child to his Father.

To expect relative duties without Relation, is moſt unnatural; it is as impoſſible as incongruous. We may as well love and hate, rejoyce and grieve, without the proper objects and incitements of thoſe paſſions. The fundamental Rule of all morality, is that of *Epictetus*, τὰς ἑκάστων τὰ καθήκοντα παραμετρεῖται, (that is to ſay) the State and Condition in which we ſtand, the relations and reſpects under which we are conſidered, our duties are determined, meaſured, and adjuſted: upon which ſee *Simplicius* his Excellent Diſcourſe, wherein many things are ſaid agreeable to our purpoſe. This moral Aphoriſm is as certain as any propoſition in *Euclid*, as the Doctrine of pro-

proportional Triangles, and received as ſuch by all the Maſters of Moral Philoſophy. There is no other foundation of our duty to God or Man, or towards our ſelves: This Rule, whatever it is, muſt declare it. Whatever is meaſured and allowed by this Rule, is commonly called, (which is comprehenſive of all that is honeſt, juſt, and fit) τὸ πρέπον. The application of this Rule is called by St. *Paul* λογίζεσθαι τὰ σεμνὰ, which when a man obſerves, he is perfectly moral. A man may as well pay his debts by giving away his Money, be grateful to his benefactor by being beneficent to Strangers, as perform that duty he ows his Father, to any but he that is ſo: It is as impoſſible to ſeparate the ſhadow from the Subſtance, as to make that ſubſiſt by it ſelf, which grows by reſultance from the ſtate and condition of the perſon; Or that without that ſtate of the perſon, from which it doth ariſe, it ſhould ever accrew.

3*ly*. Admitting *Adam* had a Soveraign Authority over all his deſcendents, which muſt grow (if there was any ſuch thing) from ſome poſitive inſtitution, and not from his paternity, yet the natural Authority and duty of Parents towards their Children, continues entire together with Soveraign Power, and is not at all abated by it, and therefore cannot be the ſame. No Soveraign Power can extort the Children from their Fathers Authority and care: This is a duty in Nature before Governments. They cannot belong to the Government, before they

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are *fillii precepti*, and capable of the Conſcience of a Law. It is a duty in Parents to Educate their Children, and a right they have in conſequence to govern them, that cannot be taken from them. It is the Parents duty to form their Conſciences. They are appointed by God, the great Miniſters of his Providence and Grace to the Children. That they perform this Office, he hath tyed them to it by the ſweateſt conſtraints and almoſt violences of Nature, by an irreſiſtable love and tyes of Endearment that cannot be broken. This declares their Right of Authority over their Children, againſt any interpoſings of Soveraign Authority to its prejudice, let or hinderance. *Thomas Aquinas* poſitively determines, that it is not lawful for Chriſtian Kings to baptize the Children of the *Jews* againſt the will of their Parents, for that (ſaith he) it is againſt the courſe of natural juſtice.

4*ly*. There is no footſteps in the Records of the old world to verifie this Hypotheſis. That ſuch Authority was ſo much as pretended to be uſed or exerciſe by *Adam*; but we find inſtances againſt it in the ſhort Hiſtory before the Flood. *Cain* received no ſentence from *Adam* his Prince and Soveraign Judge, but from God himſelf, or rather from his *Shecinah*, or ſome viſible Repreſentation of his preſence.

Thence he obtained ſome degree of impunity, and his life protected. No mention here at

at all of *Adam* his taking the Tribunal, or *Cains* arraignment, or of any pardon or indulgence granted by King *Adam*. [*Lamech* that had killed a man by miſchance, did not alledge his caſe at his Father *Adams* Court, and the matter of extenuation of the Man-killing; we hear of no pardon of Courſe to be allowed, when the circumſtances of fact had been firſt judicially conſidered.

How could a thing of ſuch importance be omitted in the ſtory of the old World, though ſo ſhort? It was of more concernment, than to know that *Tubal Cain* was the firſt Smith, and *Jubal* the firſt man that made a Muſical inſtrument, to know the original nature and reaſon of Government.

Beſides, we find all the grand-Children of *Noah* becoming Princes of Counrties, and the Sons and grand-ſons of *Eſau* alike Dukes and Princes; that is, at leaſt abſolute Fathers of their own Families, and ruling over ſuch as were their ſlaves and dependants.

And the 12 Sons of *Jacob* are all called Patriarchs.

When *Nimrod* plaid the Tyrant, we find nothing ſaid for his juſtification, upon any Patriarchal right.

But if we conſult the Traditions of the *Jews*, they will inform us of another original of Government, and that is this: They ſay that God gave ſeveral Precepts to *Adam* and his Sons,

Sons, and *Noah* and his Sons, and one amongst the reſt, that they ſhould erect Governments, which his Sons could not have performed without Rebellion againſt their King-Father, if *Adam* had been ſo, as Sir *Robert Filmer* firſt dreamt.

Alſo beſides that of making Governments, there was a Precept given them of honouring their Parents, *Selden de jure Naturæ ſecundum Hebræos, fol.* 792. And therefore the Precept of honouring Parents, is a diſtinct duty from that of obedience to Governments. By this Precept they had Authority in general to eſtabliſh Governments amongſt themſelves, in the ſpecification of which, they were left to their own liberty and diſcretion, and therefore were not obliged to any ſingle form of Government. It muſt be underſtood, that the Precept which required the Sons of *Adam* and *Noah* to eſtabliſh Governments, required alſo every mans Submiſſion to their Orders, Laws, and Decrees, when eſtabliſhed.

Laſtly, We will conſider of the inſtances he gives of the Exerciſe of Soveraign Power by Fathers of Families, which are as impertinent to his purpoſe, as his Doctrine is groundleſs and precarious: but they are theſe: *Abrahams* War, and *Judahs* Judgment upon *Thamar*.

As to the firſt, of *Abrahams* making War: We ſay we cannot allow that making War doth argue any Soveraign Authority: It is ſufficient, that he who makes it is under none to

to make a vindicative War lawful. For an injured Perſon may, in the State of Nature, vindicate wrongs by an Authority derived from God and Nature to a juſt ſatisfaction: Becauſe there is no competent judicature to appeal to for right and redreſs. But ſee how unhappy the Gentleman is! This very inſtance of his production, is clearly againſt him: for if Soveraign Power had been Patriarchal, *Abraham* had been guilty of Treaſon, in making War without a Commiſſion from *Melchizedech* the King of *Salem*, who, as the Learned men conjecture, was *Shem* his Patriarch and Chief, and known by him for ſuch. But becauſe *Abraham*, the beſt man perhaps in any Age, did not take a Commiſſion from *Melchizedech* his Patriarchal chief, and yet he was bleſſed by *Melchizedech* when here turned from the War; We may conclude, that neither *Melchizedech* nor *Abraham* knew of any ſuch Patriarchal Soveraignty. And alſo from this great example it appears, that it is lawful for him that is not a Soveraign, if he be not under any, to make War.

I will not enter into a diſcourſe, whence and how is derived the Authority of making War and capital Sentences, (for the ſame reaſon muſt warrant both) which hath puzled ſome great Divines. Dr. *Hammond*, that great man, was at a loſs in this enquiry, and thinks that nothing but a Divine Authority can warrant them

them, which hath put them upon ſtrange extravagant Hypotheſes of Government, and ſent this Knights brains a Wool-gathering. But this may ſatisfie any man of ſenſe, That whatever is neceſſary for the general happineſs of Mankind, and for preſerving peace in the world, and protecting the innocent, and diſ-inabling the mighty oppreſſors, is more commendable to be done, than the killing a man in his own defence is ſimply lawful.

As to his ſecond inſtance of *Judah* his Sentence pronounced upon his Daughter-in-Law *Thamar*, which the Knight would have an exerciſe of Patriarchal Soveraign Authority; We ſay, how could *Judah* do this by a Patriarchal Power, when *Jacob* his Father was then alive, and for all that appears, *Judah* his Son was not extrafamiliated? Beſides, which is very unlucky, *Thamar* was then none of his Family, or of the Subjects of his Domeſtick Empire; for his Son her Husband being dead, ſhe was free from the Law of her Husband, and ceaſed to be a Subject of his Paternal Kingdom. But Mr. *Selden*, under the Authority of ſome Rabbins, which he cites in his excellent Book before-mentioned, *fol.* 807. ſaith, That *Judah* might have the Office of a Prince or Magiſtrate in a diſtrict in that Country, and by that Authority might judge her according to the Laws of that Country. But what the Law was, and the Nature and reaſon of her Offence, by which it became Capital, is not underſtood, as he tells us in

in the place before-cited. I ſhall not trouble the Reader with unfolding the matter.

But why doth he trouble himſelf to make Kings *Fathers of their Countries*? ſome cannot be ſo, and ſome have no mind to be ſo; and yet they ought to be Kings. And ſome that have not been Kings, have been ſo, and ſo ſtyled; as the great *M. Tully*, for defeating the *Catiline*-Conſpiracy, was by decree of the Senate called *Pater Patriæ*. Thoſe are with reaſon truly called *Patres patriæ*, which either relieve their Country from miſerable preſſures, which is the civil death of a Nation; and for this reaſon our King hath the honour of being called *Pater patriæ*, and we hope that he will wear that honourable Title, upon a ſecond deliverance of us from a moſt deplorable condition.

Or elſe ſuch are called *Patres patriæ*, who bring the Nation to an exalted ſtate of happineſs, ſo much beyond their old ſtate of things, that they ſeem to give the Nation a new civil Life, Being and Birth.

For his etymological argument from the notation of the Word, it is too putid to be inſiſted upon, though not more ridiculous than his *Hypotheſis*.

But for that the reduction of our duty to our King to the fifth Commandment, may ſeem to give ſome advantage to this Hypotheſis, with Fathers who know no bounds of their power over their Children; It muſt be obſerv-

ed,

ed, that the Decalogue is not a compleat Rule of Morality. The Decalogue compriſed the Principal Laws of that Commonwealth which God their Law-giver by a moſt Solemn Act of his Legiſlation, did more awfully oblige them to obſerve.

God that time was their King; Rebellion was as Idolatry; and the ſin of Witchcraft, and the Defection of one of their Cities to Idolatry, was puniſhed as a revolt and Rebellion, *Deut.* 13. *v.* 15. He had provided for his Honour and Worſhip, and their Allegiance, in the firſt Table; and did deſign by the fifth Commandment to lay the Foundation of all poſitive morality, by providing for a Reciprocation of kindneſſes, by injoyning the gratitude and fitting returns of Children to their Parents, and by putting Children under obligations to be taught and inſtructed by their Parents. But our duty to Governours is more duly referred to all the other Commandments, becauſe Government ſecures the obſervation of thoſe Laws to us, by which we enjoy our ſelves and ours, freed from the Volations of Luſt, Appetite, Fraud and Violence.

We do not honour our King by relief in his fortune, which is commanded to be done by our Parents in the precept of honouring them; our ſubſidies and Aids are not to that purpoſe, but contributions to the charges of the Government; they are the juſt price of our immunity and pro-

protection, from fraud and violence; for which cauſe pay we tribute.

But whatſoever he be, that hath more reſpect for this Knights works than I have, may find him more gently treated by a very worthy Gentleman, in a very candid and judicious Book called *Patriarcha non Monarcha.*

But what is the meaning of theſe flattering Books? they cannot but be nauſeous to His Majeſty, who is a very wiſe Prince, and knows how ſenſleſs ſuch Books are: and beſides, they make the People afraid, and the Nation unquiet, from the apprehenſions they give, that the Government will be changed. Notwithſtanding the King hath given ſuch ſolemn aſſurance to the Nation by his late Declaration, That we ſhall have frequent Parliaments, and that he will govern by Law.

They would have had a better market for the Divinity they beſtow upon Princes, with *Alexander* after he had loſt his Virtue, and with thoſe vile Emperours whoſe Names are *Regum opprobria*, for ſuch the flatterers of ancient times Deifyed: thoſe who had ceas'd to be men they made Gods, and when they had left nothing about them that was tolerable, they magnified their power, which was already moſt intolerable.

If the Kings hereafter would but read the Hiſtory of Kings, under that concluſion, that a wiſe obſerver of Humane Events made after

a long obſervation and experience, and would make Experiments of the truth of it in their own reading, Kings would be glorious, and the Nations they govern happy and full of peace. They would find therein ſo many effectual Documents to fear God and regard men, and govern them righteouſly. It is this:

Si Vitam ſpectes hominum, ſi deniq; Mores,
Artem vim fraudem, cuncta putes agere.
Si propiùs ſpectes, fortuna eſt arbitra Rerum.
Neſcis quid dicis, ſed tamen eſſe putas.
At penitus ſi introſpicias, & ultima primis
Connectas, ſolus rector in orbe Deus.
Alciat.

People can be no happier than Government and Laws deſign to make them, though they do not always anſwer the good deſignments of the Government.

To what purpoſe then are theſe new Hypotheſes fram'd and publiſhed? Kings are exempted by their Office, and the ſacredneſs of their perſons, from all fears, but the fears of Nature, and theſe can never be diſcharged. Thoſe who do ill, will fear ill eternally, though their power were made little leſs than omnipotent; for the frame of Humane Nature hath made it neceſſary to be ſo. Beſides, God hath made one thing againſt another: There is a Divine *Nemeſis* interwoven in the nature of things.

things. And God will always govern the World.

Omne ſub regno duriore regnum.

The great Mogul at his inauguration ſwears, That his People ſhall be at peace at home, and victorious abroad, afflicted neither with Plague nor Famine, but enjoy Health and Plenty all his days.

This ſeems extraordinary Pompous and Arrogant; but it means no more than this, that he will govern them ſo vertuouſly, that Gods Providence ſhall be always propitious to his People; and is no more in plain Engliſh, than what our Church offers up in her publick prayers for the King, (*viz.*) *That he may govern us in Wealth, Peace, and Godlineſs*; that he may live long, and ſo govern us, ought to be every honeſt mans Prayers. But after all theſe vain Hypotheſes contrived for making Kings Abſolute, it will be more eaſie for Kings to make their Reigns unquiet, and turn their Kingdoms into Fields of blood.

But laſtly, to revive the ancient Zeal of the true Members of the Church of *England* againſt Popery: To rectifie the miſtakes of ſome Gentlemen of the Clergy about the Diſſenters: And of our late Parliaments, and their proceedings in reference to them;

Let it be conſidered, how unreaſonable their

apprehenſions are of any danger to the Church of *England*, from the deſires of the Houſe of Commons of ſome indulgence or toleration in favour of the Diſſenters at this time; eſpecially when the Proteſtant Religion is ſo ſhrewdly beſet: ſhe hath reaſon now ſure to take all ſuch for her friends, that are heartily Enemies to Popery, though not ſo skilful as they ſhould be to ward off its aſſaults. Since the Papiſts preſume to call them Fanaticks, though exactly conformable to the Church of *England*, that will not aſſiſt to bring on the Popiſh Plot by diſ-believeing it; and put us in fear of the Fanaticks, by taking all the courſes imaginable to provoke and exaſperate them, and to increaſe their diſcontents (which they maliciouſly heighten, and by falſhood and forgeries miſrepreſent): To graft thereupon a Pretence of a Proteſtant Plot, for a pretext to extirpate Proteſtantiſm and introduce Popery, which they impudently pretend to be of a more firm Allegiance to the Government than the Reformed Religion.

I pray let it be conſidered, that that which is tolerated is put under diſgrace, even for that it is tolerated; and that which tolerates, even for that it tolerates, hath the Governing Authority; and in ſo much as it indulgeth, it obligeth to modeſty and reaſon; and if that indulgence ſhould be abuſed, it may and will be retracted. It was never intended by the Houſe

of

of Commons, that the Church of *England* ſhould be altered or modelled to an agreeableneſs to any form or ſect of the Separation, or preſcrib'd to by any of the Diſſenters; or that ſhe ſhould be made ſubject to any of their rules or opinions, or her Liturgy laid aſide for Directories, or, which is worſe, undervalued to the prophane way of extemporizing: For as generally uſed and exerciſed, it deſerves no milder a ſtile. That *the Church ſhould always govern by her own Wiſdom in her own Province, and in thoſe things that appertain to her, can never be deny'd her.*

No man hath reaſon to ſay, though he hath great cauſe to diſlike the Separation, and to have a bad opinion of the Diſſenters, that he had rather ſubmit to Popery, than to any form of the Separation, for he need do neither except he pleaſeth. No man that thus expreſſeth himſelf, but will be ſuſpected to ſeek an occaſion and pretence to become a Papiſt, and to make a defection from the Church of *England.*

But if theſe Gentlemen have ſuch a diſpleaſure againſt Schiſm and Separation (which certainly is the worſt diſeaſe any Church can labour under, and at this time threatens the deſtruction as well of the Proteſtant Religion it ſelf, as it doth to the Profeſſors of all denominations) let this ſharpen their Zeal againſt Popery (which by its unhallowed arts hath occaſioned and exaſperated our Schiſm,) and put

them upon the uſe of all means to reconcile, if poſſible, the Schiſm, (that the Papiſts have already made, and by all means endeavour to continue) and take away, if poſſible, the occaſion of it for the time to come: And thus defeat the arts of the Prieſts and Jeſuits for ſupplanting our Church.

It is a moſt deplorable thing, that our Church ſhould be kept rent and divided, in danger of being loſt, between Rituality and Scrupuloſity.

Though the Scruples of the Nonconformiſts, which I always thought, and do ſtill think groundleſs, and unreaſonable, have often moved me into ſome paſſion againſt them; yet upon conſideration, I think this their Scrupuloſity may be of God, and that ſome men are by him framed to it. That he hath provided it, as a bar and obſtacle in the Natures and Complexions of ſome devout men againſt any Innovations whatſoever, that dangerous ones may not ſteal upon the Church, for the better maintaining the ſimplicity and purity of the Chriſtian Religion and Worſhip. But in ſaying this, I have ſaid nothing that is apt to give them a conceit of themſelves, bur rather to humble them: For the beſt men are not govern'd by their Temper and Conſtitution, but correct them by their Reaſon, and determine themſelves by a clear and firm Judgement.

What affrightment, all this while, either to Church or State, from this weak and pityable Scru-

Scrupulosity? Where lies the Treason or Sacriledge, nay or so much as contumacy against our Ecclesiastical Governours, which is so much upbraided to them?

The Christian Religion may be prejudiced by addition to, as well as substraction from her rule: The Church of *Rome* by her additions hath almost evacuated the Christian Faith.

Besides, there may be a fineness in the outward mode of Religious Worship in itself very justifiable, which may be not congenial to men of a coarse make. The Worship of God will always savour of the manners of the people; men of dull capacity can scarce admit of any Ceremonies without danger of falling into superstition, or hardly escape being vext with endless and incurable scruples about them, until for ease of their minds they throw them off.

But the wisdom of the best Law-makers hath considered in giving Laws, what the people would bear, and not what is best to be enjoyned; and many things have been tolerated by them which they did not approve, *ne majoribus malis detur occasio, aut etiam ne vilescant sine moribus leges.*

There is nothing more exposeth the Authority of Government to contempt, than a publick and an open neglect of its Injunctions. But where obedience to Laws is exacted under severe penalties, where it doth not greatly import the common good to have them observed,

that Government is unequal, and uſeth its Authority unjuſtifiably. *Leges cupiunt, ut jure regantur.*

The conſideration of the ſad effects the Schiſm in our Church hath occaſioned, the contempt that it hath brought upon our Eccleſiaſtical Governours. That Religion it ſelf is thereby made the ſcorn of Atheiſts. That the Papiſts are thereby furniſhed with matter of objection, reproach and ſcandal to the Reformation. That every Age ſince it begun hath heightned the malignity of the Schiſm. That it ſeems now to deſpiſe the Cure of the greateſt *Caſſanders*. Theſe conſiderations, I ſay, make it infinitely deſirable to have it utterly extinguiſhed.

There ſeems to be now left but one way of accommodating our Diviſions, and that is, that we do not hereafter make thoſe things wherein we differ matter and reaſon of Diviſion.

That the Children of the Light and Reformation, be at length as wiſe in this matter as the Church of *Rome*, which is at unity with it ſelf, under more and greater differences than thoſe that have troubled the peace of our Church; which is ſufficiently known to all Learned men.

Had it not been happy, that this Schiſm had been prevented by the uſe of the power of the Church in Eccleſiaſtical diſpenſations? If no Law had been made touching the matters

ters that gave the firſt occaſion to the Schiſm, it had been in the Power of the Church to have prevented it. No good Biſhop but would have relaxed the Canons that enjoyned theſe Ceremonies (about whoſe lawfulneſs there hath been ſo much Zeal miſpent, and unwarrantable heat and contention raiſed) for the ſake of peace, and preſervation of the Unity of the Church, to men peaceable, and otherwiſe obedient to her injunctions. *So dangerous it is to make Laws in matters of Religion, which takes the conduct of Religion in ſo much from the Guides of the Church.*

The beginning of contention is like the breaking out of waters, ſaith the wiſe man; and they are aſſoon as begun, more eaſily ended. Before the Contenders have exaſperated one another with mutual ſeverities and contumelies, which at every return encreaſe, until both ſides looſe either their Virtue, or the Reputation of it.

Can any man imagine that any prejudice can accrew to the Church of *England*, if ſhe did enlarge her Communion by making the conditions of it more eaſie? eſpecially if this may be done without annulling any of her inſtitutions, which the better inſtructed Chriſtians will always, and the Weak may in time devoutly obſerve. But till they can, they may be received and retained of her Communion, and not be rejected by her cenſures, though they

do

do not ſubmit to all of them at preſent. Will it be any prejudice, that the Number of her Biſhops be encreaſed, and that Suffragans be appointed or approved by the preſent Biſhops, *in partem ſollicitudinis*, as was enacted by the Statute 26. *H.* 8. cap. 14. Which Law was repealed by 1. 2. *P. M.* and revived by 8 *Eliz.* cap. 1. Theſe Suffragans were not intended to participate of their Honours or Revenues. Had it not been much more eligible to have diſpenced with invincible Scruples, rather than a Schiſm ſhould have been occaſioned, which the longer it continues will be more incurable, and with greater difficulty accommodated, as it grows likewiſe more miſchievous? *Is it fit that the peace ſhould be hazarded, or the Nation put with reaſon or without reaſon in fear of it: Or a Kingdom turned into a Shambles for a Ceremony, or a Ritual in our publick Worſhip, which if omitted would leave the exerciſe of it ſolemn and decent?* For no man knows the obſtinacy of inveterate prejudices, founded perhaps in the very Complexions and Natures of the Diſſenters, hardned alſo in their way by obſerving how little effect Laws have had for reducing their Numbers, and alſo how unpracticable any Severity is in the preſent broken and diſtracted ſtate of the Nation. Why may not Standing at the *Sacrament* be tolerated, (though Kneeling is the devouteſt geſture, and to me moſt agreeable) when it is a poſture of Prayer enjoyned in the Primitive Church, in their

ſolemn

ſolemn meetings for Divine Worſhip, between the Feaſts of *Eaſter* and *Whitſontide*? Why may not the ſigning of the Croſs in *Baptiſm* for the ſake of Peace and Unity, be diſpenſed with where deſired, when the *Sacrament* is entire without it? Why may not our publick *Liturgie* be changed and altered, though it may be defended as it is, and as it is, entertains the devotions of the beſt men, merely for this reaſon, becauſe it is not liked in ſome parts of it by ſome men, yet truely devout? Beſides, it is the wiſh of ſome excellent perſons of the Church of *England*, that our publick Offices were more, and thoſe we have not ſo long; and that the Church had a greater Treaſury of Prayers, and by variety of forms for the ſame Office, were enlarged in her ſpirit of Prayer, and her publick Devotions heightned. Why may not the *Rubrick* be altered as general ſcruples ſhall ariſe, by the Authority of the Church? this would not leſſen her Authority, but advance the eſteem of her Wiſdom in the exerciſe of it, when ſhe uſeth it for edification.

It is much better ſure to give place to an innocent opinion, when entertained by conſiderable Numbers, though a miſtake, than to keep up contention and ſtrife. Peace in the Church is better than preciſe and nice Orthodoxneſs; and Union is to be preferred before unneceſſary Truth, which is of no more importance to our Salvation, than one of *Euclids* Propoſitions,

positions, though to be sure not so certain, and of less use.

The business of the Church is not to make men great Clerks, to improve us to the subtilty of the Schools; but to build men up in the Faith and Love of God, by which they may be instructed to every good Work. Her aim is not to make men courtly in their behaviour in our Churches, but truly devout: and true devotion will never fail to make the Publick Worship solemn, and advance it beyond a decent formality.

But I would not be mistaken; it is not the Dissenters I intend to befriend, but the Church of *England:* for as for them, I declare I have no liking to any thing they say or do; and am especially dissatisfied with their very bad manners. It is difficult to abstain from an invective, but that I think it would be thrown away upon them, and that they are at present incorrigible. This is not the season for instructing their Wisdoms; we must wait for the *mollia tempora fandi.* I thus conclude, since that excellent person the Dean of *Pauls* hath been treated by them with such petulancies and rude insults, for his Sermon of the mischiefs of Separation. If a discourse managed with almost irresistable reason, candour, temper and Address, be matter of exasperation, and they turn again, and are more hardned in their obstinacies, and become more confirmed in

in their ſeparating way, nothing but their own thoughts, and the conſideration in what a deſperate condition they have brought the Reformed Religion by their Separation, will reclaim them.

But it is expected that Governments ſhould be wiſe, that they manage and controul the Follies and Weakneſſes of thoſe committed to their care, that they may do the leaſt miſchief to themſelves and others, and by prudent and practicable methods amend and reform them. The moſt froward, weiward, and ſtubborn Children give their Parents the moſt care, and opportunities of exerciſing the moſt tender love for them, though they can take no complacency in their awkerdneſs. The Church of *England* is concerned to retain all her Children in her Family, to ſhut out none by abdication; that their numbers be not few, and ſhe be aſhamed when ſhe ſpeaks with her Enemy in the Gate. Not to provoke any of them to wrath, leſt they forſake her, and turn againſt her when diſtreſſes ſhall come upon her. She hath reaſon at this time ſure to make her Diſcipline eaſie, and to learn of the Church of *Rome* to be more comprehenſive. Their Doctrine of comprehenſion is ſo large, that it deſtroys the Religion to encreaſe the Number of Profeſſors: but I mean no more, than that poſitive and alterable inſtitutions may give place to the peace, ſecurity, and preſervation of Religion it ſelf,

to

to whoſe ſervice they were firſt fram'd and deſign'd.

It hath been heretofore, of old it hath been ſaid, *Mores Leges in poteſtatem pertraxerunt ſuam.* *Plato* formed an *Idea* to himſelf of a Commonwealth, without reſpect to the manners of men; but he writ another, which he calls ἐξ ὑποθέσεως, that is to ſay, accommodated and fitted to the manners of the people, and ſuch as they would bear. *Origen*, in his Book againſt *Celſus*, applies to *Moſes* the Anſwer of a famous Law-giver, who asked εἰ τοὺς μαλίστους ἔθηκε τοῖς πολίταις νόμους, *i.e.* whether thoſe Laws he had given to his Citizens were the beſt? the anſwer was, οὐ τοὺς καθαπάξ καλλίστους ἀλλ' οὓς ἐδύναντο τοὺς καλλίστους. *i.e.* not ſimply the beſt, but the beſt they would bear. And we all know what God permitted to the *Jews*, in the matter of Divorce, for the hardneſs of their Hearts. When all is ſaid, *People muſt be governed as they can.*

But in the mean time, it is pity any of our zeal and indignation ſhould be miſpent, when we have uſe for it all againſt the Church of *Rome*, the ſource whence all our Diviſions ſpring. To which we owe the firſt Separations that were made in our Church; which appears by undeniable Records, publiſhed by Dr. *Stillingfleet*, in his Book called the *Unreaſonableneſs of Separation.* How they have propagated, multiplied, exaſperated, and promoted our Diviſions, to tell you, would make a Volume; beſides, no Proteſtant is now to know it. I have onely this further

ther to obſerve, that the Church of *Rome* at firſt onely deſigned by the arts of dividing us, and breaking us into ſeveral Communions, to diſgrace the Reformation, to make our ſpiritual Governours, Paſtors, and Teachers, loſe their Authority with the People: To deprave our Religion with licentious opiniaſtre, and abſurd dogmatizing; to load our departure from that Church, with the miſchief of innumerable Schiſms; and to make us reconcilable to the Tyranny and Impoſtures of that Church, from the vain opinions and licentiouſneſs of the Sectaries, who have been ſeduced, managed, inflamed, and made wilde by their impoſturous Arts and Deceits.

This, I believe, was onely at firſt deſigned by the Prieſts, but now they apparently deſign by the Diſſenters to deſtroy the Church, or by the Church to deſtroy the Diſſenters, that they more eaſily come to rights with her. They imagine the Diſſenters are very numerous, and that the Nation is fallen into two great parts; that the Diſſenters numbers are vaſt. But God be thanked, they neither make our Grand Jurymen, nor the common Halls of the City of *London*, for chuſing the Lord-Mayors or Sheriffs. And I challenge any man to give me a Liſt of all the Names of Diſſenters that were of the Houſe of Commons in our two laſt Parliaments: I am ſure they will not make a Number: but they reckon the Numbers of Diſſenters, by the

care

care they have taken to encreaſe it. They uſed great art to continue the Separation when His Majeſty was reſtored: Since, Laws have been made to raiſe the Animoſities of Diſſenters, but ſcarce ever executed for repreſſing them. If for any reaſon of ſtate the Laws here and there, and for a ſpurt, have been exacted, ſecret comforts and ſupports have been given to their Preachers of greateſt Authority with them. And when they have ſeem'd to preach with the courage and zeal of Confeſſors to their Auditors, they have not onely been aſſured of indemnity, but have received rewards. How proſperouſly did the work of Separation go on by theſe Councils of our *Achitophels!* by theſe means they concluded it would be heightned, that it would admit of no terms of an accommodation. How inſolent were their Harangues! more taking with their deluded Auditors, while they apprehended them acted with an invincible zeal of Religion. What Animations did their People receive to defy the Church and her Authority, when their Preachers deſpiſed Fines and Impriſonment, to their ſeeming, out of pure zeal againſt her Order!

It is well known, ſeveral of them were in Penſion; and no men have been better received by the D. than *J. J. J. O. E. B.* and *W. P.* &c. Ringleaders of the Separation. Beſides that Popiſh Prieſts have been taken and executed for preaching in Field-meetings in *Scotland.* They have raiſed

raiſed there a ſort of *Enthuſiaſts* more wild and miſchievous than any we had amongſt us in the times of licentiouſneſs. They have had, notwithſtanding, great Lords that have patronized them, who were always well received in their applications in their favour, at St. *James's*; and ſeveral of their Preachers, who were not Prieſts, have received Exhibition and Penſions for their encouragement. It was neceſſary that the Fanaticiſm planted in *Scotland*, ſhould be very loathſome, to make that Nation abate any of their zeal for the Proteſtant Religion, or to neglect their fears and apprehenſions of Popery, or to make the leaſt ſtep towards it.

Awake, you drowſie Sleepers, open your Eyes! the Sun is riſen, there is light enough to fill your ſight, if you would look up, and were willing to ſee. Could any thing be conceived more apt to bring the Church of *England* into contempt and ſcorn with thoſe of the Separation, than to have Laws made in her favour, penal Laws which are thought to be of her procurement, and not executed? Vain and ineffective anger is always returned with contumely, ſcorn, and hatred: *Cupide conculcatur nimis ante metitum.* And ſo it hath ſucceeded in this caſe; nothing hath been more paſſable than the baſeſt ſcurrility upon the Church, the Biſhops, and the Clergie. The Atheiſt, the impious and profane, have liſted themſelves Fanaticks, that they might have the greater Liberty of reviling Religion it ſelf with impunity.

Conſider how the Church of *England* is uſed, which is truly the Bulwark of the Proteſtant Religion. About ten years ſince, they deſigned to ſlight her works, and demoliſh her, by a general Indulgence and Toleration: And now they intend to deſtroy her Gariſon, thoſe that can and will defend her againſt Popery. By one of their Pamphleteers, the Separation is called an Uſurpation upon the Government; and all the Diſſenters (as ſuch onely) Rebels, and Traiterous to the King. The ſame Gentleman would perſwade the world, that the ready way to extirpate Popery, is by rooting out of Fanaticiſm; whether (ſaith he) the Fanaticks bring on the Jeſuits Plot, or the Jeſuits the Fanaticks, is not a farthing matter: But in the mean time, that the Papiſts have a Plot on foot, needs no proof. That any ſort of Proteſtants are engaged in a Plot, cannot be proved: But all honeſt Proteſtants of the Church of *England*, think it more righteous to puniſh the Deceivers, and pity the Deceived, and wiſh them onely cut off that make Diviſions. It is one way of curing, or rather of extinguiſhing the Diſeaſe, to kill the Patient; but no Prince did ever yet provide Cut-throats for his People, in epidemical Diſeaſes, inſtead of Phyſicians.

But if the Papiſts could arm other Proteſtants againſt Diſſenters, there would be the leſs work for Papiſts to do: And they will be ſure to requite them for this Favour with *Polyphemus* his Curteſie.

For

For, to give the Devil his due, they are not themſelves ſo fond of Maſſacres and deſtruction of Hereticks, as to envy that employment to any other that will undertake it. They had rather any other Party of men ſhould do the drudgery for them. Beſides, what one ſort of Proteſtants ſhall execute upon another, will give them better pretence and more hardineſs (if they wanted either Pretence or Reſolution to deſtroy ſuch as they call Hereticks) to execute the like deſtruction upon the Church-Proteſtants, who certainly differ more from the Papiſts, than the Separatiſts do from our Church. Surely there is good reaſon they ſhould be more ſharply treated by the Papiſts, than they treated the Diſſenters. And if they are in ſuch ſort uſed, they muſt lay their hands upon their mouths, and be ſilent before their Perſecutors, and acknowledge the righteous Judgement of God, in bringing ſuch tribulation upon them, from their Enemies, wherewith they troubled their own Brethren.

But there are better ways ſure of putting an end to the Popiſh Plot, than by putting it in Execution for them; That is to ſay,

By ſuppreſſing that contumacy that is grown ſo riſe in the Diſſenters againſt the Church of *England*, by putting the revilers of her Eſtabliſhment and Order under the ſevereſt Penalties.

By the Church her condeſcention and indulgences to thoſe that are weak and ſcrupulous,

and the peaceable Diſſenters, ſuch Condeſcentions will not abate, but magnifie her Authority.

The Church of *England* will not be by this means loſt, but her Governance preſerv'd, eſpecially if the Relaxation that ſhall be made proceeds from her *ex mero motu*, and is not impoſed upon her by any ſecular Authority. Nay, ſhe will become by this means more ample and venerable. What Glories will then ſhine upon the heads of the Biſhops! We ſhall all riſe up and call them bleſſed. They will attain an ἀποθέωσις here, and receive divine Honours while they live. Their Order will be recovered into the higheſt Veneration, and it will never be after a queſtion in the *Engliſh* Church, whether the Order of Biſhops be Apoſtolical.

The Parliament will make all Laws yield and comply to ſuch happy, peaceable, and gratious Intendments. All the people will honour them as their common Saviours, that ſhall thus ſnatch us from the very brink of Ruine, and render the deſigns of the implacable Enemies of the Church, ready to take effect to the deſtruction of our Religion and Nation, utterly defeated.

But what puniſhments can we think too ſevere upon any, that ſhall be guilty of ſuch inſolent Iniquity, as not to allow that Liberty to the Church, which they ſeek as a favour from her to themſelves; that will not let the Church eſcape their Cenſures, when ſhe graciouſly exempts them

them from her Cenſures, and pities their Errours and Follies? What Fines and Impriſonments, Pillories and Scourgings, do they deſerve, that perſecute the Church with Revilings, when they themſelves are tolerated? Their condemnation muſt be juſt, whatever their doom be, themſelves being Judges. They will ſuffer as evil doers, and diſturbers of the peace, not for their Religion, but for a moſt extravagant and intolerable unrighteouſneſs. They who will not tolerate others, are themſelves for that reaſon moſt intolerable: Againſt theſe our Laws are to be ſharpned, and their iniquities to be puniſhed by a Judge. But the Statute of 35 *Eliz.* which puniſheth diſſatisfactions, and peaceable withdrawings from the publick Worſhip with Exile and Death, declares how odly the buſineſs of the Separation hath been managed, and with what diſadvantages to the Church; as it doth alſo the impracticableneſs of Laws, that make perhaps invincible prejudices, and modeſt and peaceable diſſatisfactions, capitally criminal. The execution of this Law is ſcarce poſſible. It is by no means agreeable, either to the Chriſtian temper of our Church, or his Majeſties great Clemency, of which he hath aſſured us in the general courſe of his Reign. And eſpecially for that that Law hath been very rarely proceeded upon. A Gentleman that lay in *Cambridge*-Goal, under the Judgement of that Law, was reprieved by his Majeſty, with a great diſlike expreſſed by him

againſt that and ſuch-like ſeverities. Whatever extravagances of a few wild Fanaticks of that Age occaſioned that Law, the State of the Separation and of the Nation being quite altered from what it was then, the execution of this Law now, would be ſomething like a Sheriffs ſerving a Writ out of date in another County, which can have no effect but miſchief to himſelf.

While our Diſſenters are thus reaſonably indulged, and ſtrictly obliged to their peaceable behaviour, they can give no apprehenſions to the Government either in Church or State. This is all that is deſigned, and all that they ought to have. This certainly would be readily yielded them in this preſent juncture eſpecially, if the Evils of the late unhappy times did not ſtand upon their ſcore.

But I perſwade my ſelf, that as this courſe, if it had been heretofore taken, would have prevented one great cauſe of our late Troubles; ſo it will in ſuch meaſure prevent them from returning, as the Separation can be accounted the cauſe of them.

As for the Sacriledge and Spoil which was then made upon our Church, it could never have hapned but upon the diſſolution of the Government, nor can it ever happen again.

That War would have been impoſſible, if the Church-men had not maintained the Doctrine, that Monarchy was *Jure Divino*, in ſuch a ſenſe that

that made the King abſolute; and they and the Church in conſequence periſhed by it.

But God be thanked, we ſee the Church again reſtored to her Endowments, grown wiſer than to deſire to hold that precariouſly, and at pleaſure, ſhe doth enjoy by an unmovable legal Right. Of the three Eſtates of this Kingdom (for to ſuſpect any ſuch thing of the King, would be unpardonable Blaſphemy) there can be no reaſonable ſuſpition: Though of the Houſe of Commons it is become now lawful to ſuſpect, and ſay any thing that is evil. But no man but the Villains that deſign by diſhonouring them to change the Government, hath reaſon to entertain ſuch a thought. The Members of the Houſe of Commons in our lateſt Parliaments, were all, upon the matter, entirely conformable to the Church of *England*. They were perſons of the beſt Eſtates, Reputation, and Honour in their Countries: and they, or ſuch as they, are like to make our ſucceeding Parliaments.

I have leave to put them under the imprecation of the ſevereſt Curſe, if ever they do ſacrilegiouſly impair the Church of her Revenues. And I deſire it may be aſſiſted with the hearty and paſſionate deſires of all good Chriſtians, that ſo the Curſe I now pronounce may operate upon them who ſhall incur it. *He that deſigns, contrives, or conſents to ſpoil the Church of any of her Endowments; may a ſecret Curſe waſte his Subſtance; Let his Children be Vaga-*

bonds, and beg their bread in deſolate places.

Beſides, I know it is meditated, and deſigned by many, and the beſt men, that uſe to be ſent to Parliaments, to redeem in part that infamous Sacriledge that was committed in the times of *H.* 8. Then Rectories appropriate to Religious Houſes, which had by Appropriations the cure of the Pariſh, that ought after the diſſolution of the Monaſteries to be preſented to, were veſted in the Crown; whereby not onely the Church was robbed, but the People cheated of their Tythes, which were theirs to give, though not to retain their *Præmium* for the Prieſts Miniſtrations; which are now often moſt ſlenderly, and ſometimes ſcandalouſly, performed. As alſo to diſincumber her Revenue of the Charges and Impoſitions of Firſt-fruits and Tenths, which were impoſed and exacted by the Pope, upon his pretence of being the œcumenical Paſtor and High Prieſt of the Chriſtian Church; and at that time likewiſe conferred upon the Crown, and are as unreaſonably continued, as any thing can be that hath a Law for a pretext.

But for this, a Compenſation may be given to the Crown; and ſome way will be found out for augmentation of Vicaridges and re-indowment of Churches that loſt all in that unparallel'd Sacriledge, committed by the unſatiable Avarice of that haughty and luxurious Prince. Theſe deſigns employ the care of a great number

ber of our principal Gentlemen, to purge the ſin and diſhonour brought upon the Nation by that extraordinary King.

But if there were reaſon for any fear that the Nation could again incur the guilt of Sacriledge, What warranty can this give to any of the Clergie of our Church to ſlack or abate the Zeal that is due for the purity of her Doctrine, prudence of her Diſcipline, and her commendable, decent, and intelligible Devotion? Are they worthy to be named of her, that are ready to diſſert her, out of fear of a remote poſſibility that ſhe may not always have ſuch Largeſſes to give as ſhe now beſtows upon her Sons? Will they prefer the gift to the Altar, and declare all their Godlineſs to be Gain? To ſuffer Popery for ſuch a conſideration to be induced upon her, is a far worſe and more deteſtable Sacriledge than that they pretend to fear. This is to make the *Anathemata* of the Temple to inſerve to the diſhonour of the *Numen*. To deſecrate the Altar for the ſake of the gift: And will by the juſt Judgement of God (I fear) bring the abomination of deſolation again into our holy places.

Let none of her Sons, for the obtaining a Dignity, or a capacity for a double Benefice, betray her by neglecting her intereſt, thinking with themſelves that ſhe will otherwiſe be ſupported; for this their doings is no leſs than the ſin of *Judas*, who took money to betray our Lord, imagining,

gining that he would by a Miracle reſcue himſelf from the hands of thoſe to whom he ſold and betray'd him.

The honeſt of our Clergie will have little ſatisfaction when that day comes. When they ſhall be reduced to Prayers and Tears, if they are failing in any thing that they may lawfully do to prevent that miſerable ſtate, their Tears will be as water ſpilt upon the ground; and their Prayers will never find acceptance with God, nor be returned into their own boſom.

Diſce Miſer pigris, non flecti numina, votis.
Præſentemq; adhibe, dum facis ipſe, Deum.

But above all, thoſe fine men are not to paſs unreproved, who are preparing pretences for their Revolt to the *Roman* Church. They tell us, that the Reformation is depraved, and Popery itſelf is much amended ſince the Reformation; that it is not ſo groſly ſuperſtitious, (though her Superſtitions are ſtill enough to ſtifle Religion) nor ſo fabulous in her Legends, (ſhe need make no new ones, ſince ſhe gives authority ſtill to the old) nor ſo impoſturous in her cheats (for her Prieſts have not been *Hocus-pocuſſes* of late, uſed ſo many tricks of Leger-de-main, and preſented their Puppet-plays of moving and ſqueaking Images) ſince the Reformation, as before.

But they may know, that the reaſon why we have not maintained the dignity of the Reformation

mation intire, is this ; for that Popery hath not been utterly extirpated from amongſt us, though their frequent Treaſons, and their notorious ſeductions have deſerved it.

By its continuance amongſt us, and the reſorts of their Prieſts hither, it hath created and fomented Diviſions amongſt us, and corrupted her Children from their obedience to her guidance and inſtructions : But ſhe her ſelf is ſtill the ſame ſhe was, the Reformation of the Church is ſtill intire. She hath made good her departure from the Church of *Rome*; her Adverſaries have not been able to convict her of any fault therein, and by an eaſie victory ſhe hath triumphed over all their oppoſitions and contradictions.

And though Popery appear not altogether ſo deformed, by her Prieſts artificial Dreſs, and the Repreſentations they make of her to ſeduce us, and entice us to come again under her Yoke; yet we know ſhe hath more eſtabliſhed her Tyranny by the Council of *Trent*, and more corrupted her Morals by her modern Caſuiſts ſince the Reformation, and thereby hath rendred her ſelf more deteſtable, and for ever to be avoided.

But though it may be true, that the Popiſh world is beholden to the Reformation, and Popery it ſelf is thereby amended in ſome overt things, and reformed in thoſe Countries that have not reformed from her. For in the Light of the Reformation they have ſeen Light, and have been aſhamed of ſome of their works

of

of darkneſs, and do not bring into preſent uſe ſome of their moſt groſs Impoſtures, and ſome worſe than Pagan Superſtitions. Yet when this light is extinguiſh'd, it will be a moſt diſmal and eternal Night upon the Chriſtian world. If we return to her, our Ears will be bored, and we ſhall be irredeemably enſlaved.

The ſpirit of Popery, if it returns and poſſeſſeth us again, that hath been walking in the reformed Countries as in dry places, ſeeking reſt and finding none, and finds us thus ſwept and garniſht, will bring with it ſeven Devils more wicked than itſelf, and our laſt eſtate will be worſe than the firſt.

The Pride, Cruelty and Avarice, Domination and Luxury of their Prieſthood, will be aggravated upon us, and the minds of the Laity more lowly depreſſed by Superſtition and Ignorance. The Goſpel of Cardinal *Palavicini* will be the Canon of the Chriſtian Religion, or it may be ſomething worſe; for who can tell what will be the Religion that that Church will offer in proceſs of time to the world under the Chriſtian-Name? When the Pope by his pretended infallibility may make the Chriſtian Religion what he pleaſe, by interpreting, adding, altering, or detracting with an uncontroulable Authority. For us therefore to become Papiſts, to return to the Church of *Rome*, acknowledge the Popes Infallibility, (there is no other way to become Papiſts) is virtually to betray the Chriſtian Faith, to renounce our Allegiance to our Lord Chriſt, to prefer the Bulls of a pro-

profane Pope, to the holy Oracles of God, and the Revelation of Jeſus, God bleſſed for ever.

With this Religion therefore we can never make an accommodation; we may as well make a Covenant with Hell. This (as Dr. *Jackſon*, one of the glories of the Church of *England*, in his Book called *The Eternal Truth of Scriptures*, vehemently admoniſheth us) admits no terms of parley for any poſſible reconcilement: whoſe following words to this purpoſe, I ſhall here tranſcribe.

The natural ſeparation of this Iſland from thoſe Countries wherein this Doctrine is profeſſed, ſhall ſerve as an everlaſting Emblem of the Inhabitants divided Hearts, at leaſt in this point of Religion: And let them, O Lord, be cut off ſpeedily from amongſt us, and their Poſterity tranſported hence, never to enjoy again the leaſt good thing this Land affords: Let no print of their Memory be extant ſo much as in a Tree or Stone within our Coaſt. Or let their Names, by ſuch as remain here after them, be never mentioned, or always to their endleſs ſhame: Who living here amongſt us, will not imprint theſe or the like wiſhes in their Hearts, and daily mention them in their Prayers.

Littora Littoribus contraria, fluctibus undas,
Imprecor arma armis, pugnent ipſiq; Nepotes.

Which he thus renders.

Let

Let our,& forein Coaſts, joyn Battle in the Main,
E're this foul Blaſphemy *Great Britain ever ſtain.*
Where never let it come, but floating in a Flood,
Of our,our Nephews,and their Childrens blood.

I ſhall onely ſubjoyn my hearty Deſires and Prayers, that we may all fear God, and be zealous for his true Religion. Honour the King, and firmly adhere to the Government, and in our ſeveral places ſteadily oppoſe and reſiſt thoſe Villains that are given to change. That by our Union we may defeat the crafty deſigns of our cruel and implacable Enemies, who if they can continue thoſe Diviſions they have made amongſt us by their wicked Arts, will certainly at length deſtroy us; who are bent upon our deſtruction, though they themſelves periſh with us, we ceaſe to be a Nation, and our Language be forgotten in a forein Captivity.

Sir,

Now I have given you my Anſwer to your Reaſons to diſſwade me from publiſhing the Argument for the Biſhops; by repreſenting how few of the Clergie can with reaſon be thought guilty of Opinions ſo miſchievous to the Church and State, which you charge to have generally corrupted them; and how eaſily and with little conſideration they will be laid aſide by them.

I will make no other Apologie for the publiſhing this, than that I have communicated theſe thoughts to no Man alive, either of the Church of

of *Eugland*, or any other denomination, or conſulted any mans advice about it. That I can ſerve the deſign of no party of men herein, nor any particular deſign of my own: I wiſh they can be ſerviceable in the leaſt degree to publick good. I have had them by me a great while, and have conſidered them under the ſeveral varieties of temper that our Bodies are diſpoſed to, which induce different thoughts, and various apprehenſions in moſt things, under the ſeveral paſſions that the fluctuation of publick affairs have occaſioned; under the Ebbs and Flows of Hopes and Fears in reference to the ſtate of the Kingdom, for ſome length of time. And finding them to have the ſame appearance, and to give me the ſame ſatisfaction in all their ſeveral poſtures, and the views that I could take of them. I aſſure my ſelf I was ſincere when I thought, and that they reſult meerly from my Judgement (ſuch as it is) uncorrupted. That I am not perverted or biaſſed by any ſecret paſſion or deſire of any ſort, which many times lurk and ſteal upon us, deceive us unawares, and undiſcernedly abuſe us. Sir, the ſum of my Apologie is this; that I know my ſelf ſincere, of honeſt Intentions, moved by nothing but a hearty love and affection to our King, Religion, and Country: and for what any man ſhall think of me, I am not Solicitous.

Yours, *T. H.*

The

The Great and Weighty

CONSIDERATIONS

Relating to the

Duke of York,

OR

Succeſſor of the Crown,

Offered to the KING, and both Houſes of Parliament:

CONSIDERED.

WITH

An ANSWER to a LETTER from a Gentleman of Quality in the Country to his Friend, relating to the point of Succeſſion to the Crown.

Whereunto is added,

A ſhort HISTORICAL COLLECTION touching the ſame.

LONDON:

Printed for the Author, and are to be ſold by the Bookſellers of *London* and *Weſtminſter*. 1682.

TO THE READER.

I *Have in the* Poſtſcript *offered Reaſons of the* Lawfulneſs *of an Act of* Excluſion, *which to all* true Proteſtants *muſt needs be deſirable, if it can be lawfully* obtained. *Yet for the farther* ſatisfaction *of* unthinking people, *and Men of* weak Minds, (*who are never certain,* (*eſpecially in* great Matters) *where Men of* Note *are divided in their* Opinions; *but for that very Reaſon, where they have no* direct Reaſon *to guide them in forming their* Judgment, *remain* ſcrupulous, *if not* doubtful; *and for that they doubt, they muſt therefore conclude the Matter, as to themſelves, at leaſt* unlawful) *I have* Reprinted *theſe* Diſcourſes, (*that were Printed near three years ſince, in* An-

ſwer *to two* Books, *written by two* Eminent perſons; *the firſt ſuppoſed to be writ by a great* Secretary, *the other by a* notable Lawyer *thereto employed*, *under* promiſes *and* expectations *of great* Preferments. *This mans* Book *eſpecially*, *is highly applauded by the* Ducal Party; *his very words made the ſtile of the* Act of Parliament *in* Scotland *for the* Recognition *of the* unalterableneſs of the Deſcent of the Crown, *and his* Book *accounted unanſwerable*, *and the whole Cauſe*, *by the* Aſſerters *of this* Doctrine, *put upon the force and conſequence of his* Reaſonings. *And indeed*, *I have ſeen nothing ſo conſiderable made publick and offered to the World*, *for the defence of the* unalterable Right of the Deſcent of the Crown, *as are the* reaſons *of theſe two* Books *which we have conſidered in theſe following* Diſcourſes. *To the end that the* reaſons *againſt the Bill of* Excluſion, *as well as the* reaſons *for it*, *being duly examined together*, *no honeſt man may from a doubtful* Conſcience

be any longer under a neceſſity of ſuffering the Miſchiefs of a Popiſh Succeſſour, *which will be more* intolerable *when they come to be* felt, *than any imagination can* ſuggeſt, *or any* words *can* expreſs.

True it is, the Moſt *cannot conſider duly of a* Matter, *and determine upon it, by their own proper* Reaſonings *and* Diſcourſings: *and yet they have ſo much* reaſon *as to think, That where* Doctors *differ they have reſpectively their* reaſons *for their* different opinions, *though they themſelves do not apprehend them; and conſequently at leaſt* doubt, *and of what they* doubt *they conclude* unlawful.

Yet even the Moſt *may judge what* weight *and* moment *the* reaſons *and* arguments *upon which each* party *ground their* Concluſions *are of, if they are truly, clearly, and nakedly propounded, reflected upon, and made fit for their* Judgment *and* Capacity: *and they may thereby be brought to diſcharge their* doubt, *and determine with clear* ſatisfaction, *in any matter ſo diſ-*

cuſſed, if they will honeſtly *and duly* conſider.

I perſwade my ſelf, I have by the reflections *I have made upon the* Diſcourſes *of theſe two* renowned Authors, *prepared their* Reaſonings *for the judgment of the ordinary ſort of men, if honeſt. To ſuch, their* Arguments *muſt appear ſo frivolous, as they will conclude theſe* Authors *downright* Advocates *for the* Popiſh Superſtition *and* Cruelty, *under the thin* pretences *of defending, That a* Succeſſour *to the* Crown, *by an ordinary and common right, cannot be Excluded by an Act of* State. *Such a* Succeſſour, *who (if he be not a Papiſt, yet) hath openly departed from our Church, in which he was born, and for which his Father ſuffered* Martyrdome; *and for the preſerving the Peace of* Three Kingdoms, *diſdains to tell us he is a* Proteſtant; *and neglects the direful* impreca-tions *of his* Grand-father; *though no* Curſes *are ſo operative as thoſe of* Parents *upon their* Children, *upon weighty cauſes ſo-*

ſolemnly pronounced: Theſe can kill at the Root *the moſt* flouriſhing *and* prolifical Families, *make their* Root rottenneſs, *and their* Bloſſom *to go up as duſt*; Omnem vaſtant ſtirpemque domumque.

Δειναὶ τὰι χ᾽ γαίαν Ἐρίννυες ἴισι τοκῆων.

And therefore I have cauſed theſe reflections *to be Reprinted, if happily they may conduce any thing towards a full information of my doubting* honeſt Countrymen, *in a matter ſo weighty*; *and conſequently, towards the prevention of the* effuſions *of* Engliſh Blood, *in* Wars, Maſſacres, *and* Martyrdomes, *and of the lawleſs, violent, and* bloody attempts *to be made for the* Extirpation *of the* Reformed Religion *Eſtabliſht amongſt us by* Law, *by the* Romaniſts *And laſtly, towards the re-eſtabliſhment of our* Government *and* Nation *in* Peace *and* Tranquility *again, which are now moſt miſerably diſtracted, by the fears of a* Popiſh Succeſſour, *and by the* Doubts *about* Excluding *him.*

To the Reader.

If we did not doubt without reaſon *of the lawfulneſs of Excluding a* Popiſh Succeſſour, *we ſhould have* no reaſon *to fear him.*

The

The Great and Weighty

CONSIDERATIONS, &c.

CONSIDERED.

WHatever is the ſubject matter upon which we exerciſe our Thoughts, or whereupon we make our Enquiries, doth not make the Conſiderations of ſlight and vain Men GREAT and WEIGHTY. A man of ſlender Endowments doth not commence to be Wiſe, as ſoon as matters of great Moment take up his Thoughts. But if he be of ſuch a make, as renders him capable of being in any degree Wiſe, he is affected with an ingenuous Shame, finding the matters too hard for his Capacity, and above his reach: He is diſpleaſed and diſſatisfied with his own dark, indiſtinct, and confuſed Conceptions, in which he himſelf can receive no ſatisfaction: he ſuſpends, and determines nothing, but that he doth not underſtand the matter, and reſorts with deference to thoſe who are wiſer than himſelf.

But there is a ſort of Arrogant Fools who trouble the World, make it difficult to underſtand plain Truth, confound the Notions of things

things, blend things of remote diſtances in their nature together, or put one thing for another that have no affinity to each other; puzzle and perplex the minds of the Weak.

Theſe deſerve the Indignation of the better ſort of Judgments, who cannot but be empaſſioned while they ſee a great part of mankind abuſed to their hurt. By the villanous practices of ſome, deſigned to the endurance of the greateſt miſchiefs; and by a ſort of ſilly Knaves attempted upon, for deceiving them into a permiſſion of all the pretented evils to come upon them; who preſumptuouſly uſe their little Wit to enſnare the Conſciences, to perplex the Minds of the Multitude by Objections puzzling to the weak, by ſuch Reaſonings, as none but fools could think of, and none but bold Knaves would offer to the World: Such I take to be every immodeſt man who will adventure, not from his Underſtanding, and therefore from his Will, and conſequently his Intereſt, to ſpeak things that have no conſequence, and are not induc'd by the Laws of Reaſoning and Diſcourſe; that have a tendency to diſpoſe men to ſcruple of Conſcience, and make them doubtful and unactive againſt the evils of the greateſt ſize that are deſign'd againſt them, and to neglect or reſiſt the Counſels of God againſt themſelves, and fatally fall under the deſigned evils, notwithſtanding they are provided of a juſt and allowable Remedy againſt them.

There are, and ever was, and ever will be, to

the

the trouble of Mankind, a ſort of literate Fools (who will always obtain ſome reputation with the ſtupid admiring Vulgar) made by Nature to little Underſtanding, and who have loſt that little for want of uſing it; who by Books good or bad, it matters not much, become greater Fools than they could have been, if left to ſimple Nature; who by imperfect remembrances, and undue joyning of things more imperfectly underſtood, make moſt perverſe Judgments in all things they are converſant about. And if it happen that by their Complexion they prove forward, and are opinionated of their falſe Learning, they obtrude upon the World their unnatural, monſtrous, and incoherent Conceptions. And if they chance to mix their Diſcourſes with paſſages of Holy Scriptures, and thereby entitle Religion to their Abſurdities, they more powerfully amuſe, diſtract, and abuſe the Conſciences of the common People, and perplex them with Scruples and Prejudices, and that ſometimes againſt the only means of their preſervation. And this calls upon, and urgeth the Charity of ſuch to whom God hath given a better underſtanding, to appear and come forth for the undeceiving and rectifying the Judgments of the moſt deceivable part of Mankind, and with juſt ignominy and ſcorn to beat down the aſſumings and preſumptions of ſuch Pretenders and Smatterers in Letters; eſpecially in ſuch a Weighty Matter as this, when the poor people (if miſtaken)

muſt

muſt be miſtaken to their Ruine, and periſh by the Deceit, if deceived; which, I hope, is ſcarce poſſible for very many to be, by this frivolous Pretender and Offerer of Conſiderations, which none but he that deſerves our pity could think of; but for that he dares to offer them publickly to the World, and under the ſtile of [*Great and Weighty Conſiderations,*] he moſt juſtly deſerves our Indignation, a private Scorn, and a publick Cenſure. For that purpoſe we will now produce him.

HE begins his Conſiderations with a Conſideration and Recommendation of himſelf, and would fain prove his Honeſty; for he was with reaſon conſcious that this undertaking would render him more than probably ſuſpected: He proves, as well as any thing he undertakes, and as well as it can be proved, That he is an honeſt man. This he would have the World believe, becauſe there is ſuch a thing as ſincerity in the World; and for that there have been ſome men that have owned an afflictive Righteous Cauſe againſt ſelf-intereſt, and the diſpleaſure of a prevailing Faction: but we know the Cauſe that he Patronizes, is the moſt unrighteous Cauſe that ever any man of Front eſpouſed: but that ſhould not trouble us. But that which afflicts us, and is the heart-aking of all good men, is, That this Scribler with too much reaſon we know, preſumes that the Brave men (whom he reviles

viles for adhering to the onely means of the ſaving of three Kingdoms) with the Groſs of the Nation, are deſigned to be ſubdued by a party of men whoſe ſtrength the King in his profound Knowledge and Wiſdom beſt knows how to Calculate: but certainly this Addreſſer imagines very great, whatever he pretends, and that he is well backed by force. Otherwiſe he could not adventure publickly to deſpiſe the Intereſt of a Houſe of Commons. If this Conſiderer and his Fellow-Conſpirators had not ſome ſecret reſerves of Strength, he would not adviſe the King as he doth, to Adhere to, and Govern with the Houſe of Lords and his Privy-Council, and to lop off the Houſe of Commons from the Government as an unprofitable Branch.

In the next Paragraph he tells us, The *Chiefeſt Principle and Maxim of the true reformed Religion in this Kingdom, is fully Epitomized in this excellent Precept, Give to every one his due.* If there can be more nonſenſe ſpoken in ſo many words, it is this Patriot muſt do it; and you ſhall find him often performing what I have undertaken for him. And ſure, after ſuch demonſtrations of his Honeſty, and proof of his Underſtanding, you muſt take him for a *True Patriot*, and a fit Addreſſer of GREAT and WEIGHTY Conſiderations.

In the next Paragraph he undertakes to commend

mend and allow, chide and and diſapprove our leading Men; I believe he means of the Houſe of Commons, but we want his Name; it's fit he ſhould diſcover himſelf, before we can admit him to ſit Judge of the Actions of the moſt excellent Perſons of the late Houſe of Commons. I perſwade my ſelf he would bluſh, (however immodeſt he appears in his Addreſs) if he were drawn out and expoſed to publick view under ſuch a Character; we might ſpare him the Pillory, rotten Eggs, and Turnep-tops, which is due to infamous Libellers againſt Governours; for he is a man of ſuch faſhion (I believe) that he would ſuffer too much of Shame and Confuſion of Face, (if he were but known well enough to be poin-) ted at) after we have done with him.

In the fourth Paragraph, he allows it is a glorious thing to eſtabliſh the True Proteſtant Religion; but he would not have it eſtabliſhed upon Quick-ſands: neither would we, becauſe it is impoſſible it ſhould be ſo eſtabliſhed; we would not have it depend upon looſe accidents, expos'd to Chance and Contingencies, and expect it ſhould be ſupported by rare events, and morally impoſſible: nor to be left at Six and Sevens, a chance that is not upon the Die, and hope that things ſhould out of their Courſe and Nature unite and combine together for its ſupport.

That which is Glorious is ſo, becauſe it is Excellent in it ſelf, and difficult to be atchieved;

and

and whatever is difficult, is to be obtained by unuſual and extraordinary means: to deny or condemn the uſe of them when lawful, is to deny us the end; and is ſo far in truth from allowing it to be Glorious, that he doth not allow it at all.

That it is made difficult to ſupport the Proteſtant Religion, we owe to the Popiſh Conſpiracy; and the deſign of this man is to make it impoſſible: to that purpoſe he requires you to lay aſide Humane Policy, which is the ſame as true Prudence (which is the onely Guide God hath given us, and the onely Oracle he hath left us to conſult in our Affairs, and is never repugnant (as he would have it) but always conformable to the Laws of God and Nature) leſt we ſhould be furniſhed with a Remedy againſt the deſigned miſchiefs to us and our Religion.

To this commendable ſort of Policy, the deſign of the Bill will be made agreeable in the following Diſcourſe. That we may admit the abſurd Doctrines of the Church of *Rome*, we are required to abandon our Reaſon; and that we may more eaſily again fall unto her, we muſt (if we will be ruled by the Conſiderer) renounce our Prudence; and thoſe that will not, muſt endure his ſlanderous Reproaches, with which he goes on to revile the promoters of the Bill of Excluſion, whom he calls *Hypocrites, Factious Spirits of the Fanatical Leven; that they make a Cloak of Religion to palliate black Deſigns; fierce Zealots, acting like*

like the Rump-Parliament, Guilty of Antichriſtian attempts, repugnant to the Ordinance of God, and to the Fundamental Laws of the Kingdom; a few turbulent Zealots, aſſuming to themſelves a Soveraign and deſpotical Power of Depoſing the DUKE of YORK: and ſays, *That they impudently affirm, That this hath been the Ancient Cuſtom of Parliaments, to Depoſe Princes, and diſpoſe of Kingdoms; whereas the Crown hath been always Hæreditary, and never depended upon the Suffrages of the Subject.*

Since this bad man preſumes to ſay ſo many bad words falſely of the Excellent Members of the late Houſe of Commons, reproaches their Zeal for the publick Safety, moſt Heroically exerted in the time of the greateſt Need, and moſt threatning Dangers; calls their appearance for the ſupport of the Proteſtant Religion eſtabliſhed by Law, Hypocriſie: And the proſecuting the Diſcovery of the Helliſh Plot, and the beſt means of preventing the Plot from taking effect, black Deſigns. Since, I ſay, his Immodeſty hath given him ſo much Licenſe, I wonder he had no more Scurrilities, eſpecially ſince he is ſo impertinent as to call the Bill of Excluſion, an Antichriſtian Attempt, Repugnant to the Ordinance of God, (though God never yet made any Law or Ordinance in that Caſe), and the Fundamental Laws of the Kingdom; though no Laws of Men are ſo Fundamental but they are alterable.

The Conſtitution of Government is indeed unal-

unalterable by Law, but no Laws but are alterable by the Government; for the Government was before Laws, and made and constituted most chiefly for the busines of Legislation.

That the House of Commons assumes a Soveraign Power, he knows to be false; and knows too, that all the world knows he is therein a Falsary. What can be expected of Candour or Sincerity from a man of such Effrontery? And to the making the Slander compleat, he joyns Despotical to Soveraign Power, as if they were the same; an instance of his egregious Ignorance, except he flatters the King; and would signifie to him that he hath Despotical Power, because he hath a Soveraign Power: and this commends him indeed for a true Patriot. A Despotical Power is such as Masters use over their Servants, that command what they will, because they will. Soveraign Power is exercised for the good of those that are governed; and the Commands that come from the Soveraign Power, are Laws that are deduc'd from publick Reason, as they are the publick Measures, and are always reasonable, or pretend to be so.

No body ever affirmed, before this Addresser to the King, That it hath been the Ancient Custom of Parliaments to dispose of the Crown, or that it depended upon the Suffrages of the Subjects; which he falsly and maliciously adventures to say, to misrepresent the most Venerable late House of Commons, whose Proceedings will ju-

ſtifie themſelves in true Story to all ſucceeding Generations, and will, we all hope, be ſeconded and out-done by the next; if the good People can keep themſelves from being deceived by ſuch Artificial men as this Addreſſer is.

But this is ſaid, and truly, That a Parliament, which is King, Lords, and Commons, have declared, and particularly, a Parliament in the Reign of that moſt Excellent Princeſs Queen *Elizabeth*, of Eternal Memory, (the wiſeſt and greateſt of the Princes that are Glorious for the Reforming the Chriſtian Religion) did declare a Power in themſelves, for Great and Weighty Reaſons of State, to alter the Succeſſion, otherwiſe than of courſe it is by Law appointed: and moſt reaſonable it is; for no Government can want a Power to preſerve it ſelf, and obtain its great End, *viz.* the preſervation of the Community and the Polity it ſelf; and no leſs Reaſons than theſe, require and urge the Uſe and Exerciſe of this Power in an Act of Parliament for Excluding the D. from Succeeding to the Imperial Crown of *Engand*. In order to theſe ends, the Power of a Parliament is unreſtrain'd, and unlimited; which this Conſideration-Monger calls Scoffingly (Impiouſly and Prophanely towards God, and irreverently towards the Government) Omnipotency.

In the next Paragraph, he produceth his firſt Reaſon againſt the Excluding Bill. And by an execrable Argument, he adventures to prove,

That

That the diſcent of the Crown is Sacred, viz. *That an Attainder in Treaſon cannot debar the next Heir from ſucceeding in the Government.*

But if the Heir had died of that Attainder, the Argument had been ſpoyled. For cannot that Power that can inflict Capital Sentences, and that ought to do it againſt all in ſubjection that incur them, Baniſh inſtead of Kill: ſure he is no true Friend to his Royal Highneſs, whatever he pretends; we will ſooner admit him a true Patriot, for that he makes the condition of his preſumptive Heir ſo hard, That he muſt either *Die* or *Reign*. A very judicious Advocate, and deſerves very well of his Client, who will remember him, ſure, when he comes into his Kingdom, for bringing him into ſuch danger.

I believe this conſidering Patriot ſhifted himſelf in this Conſideration into *France*, where they have Princes of the Blood, againſt whom no Criminal Proceſs can be formed, nor no Attainder of Blood is admitted, to the purpoſe that the moſt enormous Crimes may not ſeem faults in thoſe that participate of the bloud of that haughty Tyranny. But the better to diſguiſe himſelf, he criminates the Parliament, calls the Houſe of Commons in deriſion Cunning Politicians, that would have a new Model of Government; he chargeth them with aſſuming a power to depoſe the King, and will conclude, becauſe he will, (and hopes the People will take his Word for it) for no other reaſon in the world,

that we may as well Depoſe the King, as foreclose a Preſumptive Heir, which he will call deposing him: for this Ruffian-like man will not ſubmit to the common uſe of Words, and is at defiance with the common Senſe of Mankind; and will ſay it, That it is as lawful to Depoſe the Poſſeſſor of the Crown, as to make an Act of Parliament for preſerving the Life of the preſent King, by diſabling the next Succeſſor that brings it in danger: And likens the late Houſe of Commons, upon the ſcore of their Bill of Excluſion, to the Rump. Oh! for a Diſcoverer that would bring this man to Light and Shame, and thereby to Reaſon and Sobriety.

Upon this weak and ſlight colour of a Reaſon, ſee in the next Paragraph how he lays about him, with what vehemency and expoſtulation; and yet in his magiſterial Rant, the trifler could no ſooner name an extravagant Bill, but he thinks of a Box of Gilded Pills, which if he had been lately under cure by Mr. *Hobbs* his Doctrine of the train of Thoughts, they could not eſcape coming together. And yet this Thinking Addreſſer is not altogether ſo happy in dividing and oppoſing, as in compounding. For he affirms, that to go about to eſtabliſh the Proteſtant Religion by a Bill to Exclude the Popiſh Succeſſour, is inconſiſtent with the Government, and is to deſtroy the very Root and Life of Government.

But,

But, pray Sir, for the ſake of Reaſon tell us; Doth the Government it ſelf depend upon the perſon that Governs? or is the Government it ſelf changed by the alteration of the Succeſſion? may not Governments, for kind the ſame, have different modes of Succeſſion? and are not the kinds of Succeſſion, more than the kinds and forms of Government? Can the Government be ſafe without a Power to exclude a Perſon inhabil in Nature to ſupport it, or of one Principled to deſtroy it? Can we imagine a Government which is of Humane Contrivance, to be without a Power to preſerve it ſelf; and an Authority, in Caſes that threaten its Ruine, to interpoſe with apt Remedies for its preſervation? That a Government made by men ſhould be left meerly to chance, and the contingency of Birth, whatever happens of inability in the Perſons that come under the general Rule and Limitation of Succeſſion?

Doth the Exerciſe of this power turn the Kingdom from being Hereditary to Elective? is there no difference between the inconvenience of Judging of the ſeveral Degrees of fitneſs in ſeveral perſons competently qualified, and the proceeding upon evident notoriety to exclude one that deſigns the ſubverting of it, and the deſtruction of thoſe that are to be governed and protected and hath incurr'd a ſeverer Doom? I well hope there are very few in this Nation ſo ill inſtructed, that doth not think it in the Power of the Peo-

ple to depoſe a Prince who really undertakes to alienate his Kingdom, or to give it up into the hands of another Soveraign Power: Or that really acts the Deſtruction or the Univerſal Calamity of his People.

The Learned and Judicious Mr. *Falkner*, than whom there is no perſon of this Age with the Church of *England* in greater eſteem; Who truly merits the high eſteem of all men for his excellent Candour and Learning: In his Book called *Chriſtian Loyalty*, cannot deny the right to be ſo upon thoſe caſes really happening, but is not willing to ſuppoſe ſuch Caſes can ever happen in Fact. He tells us, If any ſuch ſtrange Caſe as is propoſed, ſhould really happen in the World, it would have its great difficulties. *Grotius* (he tells us) thinks that in this utmoſt extremity, the uſe of ſuch defence as a laſt refuge, *ultimo neceſſitatis preſidio*, is not to be condemned, provided the care of the common Good be preſerved. And if this be true, ſaith he, it muſt be upon this Ground, that ſuch attempts of ruining do *ipſo facto* enclude a diſclaiming the Governing theſe perſons as Subjects, and conſequently of being their Prince and King; and then, notwithſtanding his Propoſition (ſaith he) would remain True, *viz. That it is not lawful upon any pretence whatſoever, to take Arms gainſt the King.*

All that Mr. *Falkner* offers in this matter, out of his commendable Care and Zeal to Peace and Government, is, to argue the Caſes in Fact impoſſible

poſſible, and that ſuch ſuppoſitions may be the undue imputations of Factious perſons againſt their Soveraign: He thinks that Princes may have a Conſideration of the Account they muſt give in the other World of their Government here: That they have a regard to their Honour and Eſteem, and a Reſpect to their Safety; To the quiet and ſerenity of their own minds, and will avoid the *Diræ Vltrices*, and the Tortures of mind that attend Cruelty, and the Actors of great miſchief, and by ſuch Conſiderations as theſe be contain'd in their Duty.

But do theſe Arguments of his, that ſhould reaſonably, and ordinarily do, ſecure us againſt the Oppreſſions of Potentates, give us in this juncture any Security? are theſe Conſiderations Diſſwaſives or Incitements to a Popiſh Prince to act our Fears, and give reality to the Suppoſitions? To any under the Principles and Counſels that guide ſuch a Prince already entred upon the Deſign, and his Party obnoxious, theſe Conſiderations would urge him to proceed, and make our Calamity certain: Theſe Arguments of his applyed to ſuch a ſtate of things, is like a *Proteſtatio contra factum*; and like the Sophiſtical Arguments of the Stoicks, who would undertake to prove a thing acknowledged and exiſtent and preſent to be impoſſible.

How wild then and tranſported muſt this Patriot ſeem, who will undertake to argue the Bill guilty of the higheſt Iniquity and Injuſtice, Ar-

raign the greateſt and Beſt part of the Nation, adjure them to anſwer it at his Tribunal, challenge us (for ſo his Expoſtulations and Enquiries of us doth import) with intentions to over-reach Providence; and that we deſpair of the juſtneſs of our Cauſe, or the Goodneſs of God. And he tells us, That God doth not want our Wickedneſs to fulfil his Holy Will.

We anſwer: How far the Providence of God will aſſiſt us in this undertaking we know not, it is not new in the world for the moſt Righteous Cauſes to be unproſperous; we are onely to do our Duty, and leave the Iſſue and Event thereof to his All-Wiſe Providence. But we know, and are moſt aſſured of the Juſtneſs of the undertaking; and we have a good hope in the goodneſs of God, that he will ſucceed it, for that herein we are doing nothing that is evil, but fulfilling his Holy and Good Will: I mean, not that we are certain to obtain what we deſire and purſue: But it is the Will of God concerning us, (who hath left us in the hands of our own Council, and hath not told us, That he will ſave us by a Miracle) that we ſhould be Loyal to our Soveraign, zealouſly love that excellent Religion and that excellent Government that his Gracious Providence hath eſtabliſhed amongſt us by Law: And alſo that we deſire and endeavour by Law to diſable (in the underſtanding of the repreſentative of the Nation) a profeſt Enemy both to our Religion and Government, from getting into the Throne;

Throne; that he be not by that advantage of Power, enabled to effect his purpoſe.

But we are reſolved we that will not call that Deſign Evil, though it do not ſucceed; nor think that we are not doing the Holy Will of God, though we ſhould be unproſperous therein, and without ſucceſs. If there was an Oracle to Conſult, we would not know what the Succeſs ſhould be, leſt our Virtue ſhould loſe its Glory. No brave man, but would deſpiſe all Auguries, when he is to contend for his Country, and things more precious to him than his Life. *Sortilegis Egeant dubij.* This falſe Patriot takes Sanctuary in his Revolt from publick Intereſt; and he thinks he is ſwimming to Shore with his Plank before a Wreck, and will fly the Danger before it approaches: but we will do our Duty, weather the Storm ſecure of the event: for the goodneſs of the Cauſe makes us hopeful, and we will Triumph in our Integrity though diſappointed. Of any other Will of God, ſave what is his Will for us to do, as Citizens, Souldiers, or Martyrs, we are not ſo ſollicitous to know.

The Noble *Roman*, when adviſed by his Friend *Labienus* to Conſult the Oracle of *Jupiter Ammon*, as to the event of the War in which he was then engaged, Thus anſwered him,

Quid Quæri Labiene *Jubes an liber in armis*
Occubuiſſe velim potius quam Regna videre?
An noceat vis ulla bono? fortunaque perdat
Oppoſita

Oppoſita virtute minas? Laudandaque velle
Sit ſatis? Et nunquam ſucceſſu creſcit Honeſtum?
Scimus & hæc nobis non altius inſeret Ammon.

I do but right to my Country-men, to bear my publick Teſtimony, that their generous and godly Reſolutions are agreeable to this Noble *Roman.* But that done, I will calmly tell him, That we are in a Legal method, allowed by the Government, contending for its preſervation by the Bill of Excluſion; and that moſt certainly he can have no right againſt a Law (for ſuch it will be, when that Bill hath the Royal Aſſent) to any thing that he ſhall forfeit thereby: And whether ſuch a Law is not moſt righteous, let God, Angels and Men Judge.

And here it will not be amiſs to admoniſh this Patriot, That no man hath a Right to any thing from God and Nature (to uſe his Words which he uſeth, but doth not underſtand of what Import and Value they are in this place) for the Rights of Property are of poſitive and civil Appointment and Inſtitution. No man can have, or is entitled to any thing, but what, and as the Law allots it to him. They deſign what is Right, what Wrong, and what is Injury and Theft; and the Law of God, both in the Reaſon and Nature of man, as well as by expreſs Revelation, forbids it. *Nec natura poteſt juſtum ſecernere iniquo.*

Men make Governments, and God Commands us to obey them; yea, God Commands us

us in our Nature, to form our ſelves into Gavernments. For that Mankind cannot tolerably ſubſiſt without them. What is greatly convenient, and promotes the happineſs of men' therefore ſeems to be Commanded, and thereby a poſitive and affirmative Law of God in Nature is declared. What is or would be greatly miſchievous to mankind, if generally permitted, is therefore underſtood by us prohibited. The Miſchief declares the thing forbidden, and is the indication of a Negative Precept, or prohibitory Law. The pleaſure and ſatisfaction of mind that men take in being beneficent and agreeable to, and deſerving well of their own kind: The remorſes, ſhame, fear and regret that men neceſſarily ſuffer from the ſenſe of their own actions, when they are offenſive, unequal and unreaſonable, are the Sanctions of the Laws of Nature, and are truly the Rewards and Puniſhments of God in Nature.

So that Anarchy, which is the moſt intolerable ſtate of Mankind, a ſtate of War and Violence, unreaſonable Paſſion, and unbounded Appetite, ſeems to be the moſt forbidden thing by God in Nature.

But Government, becauſe it makes men equal and reaſonable, juſt and peaceable, kind and beneficent, or finds them ſo, encourageth them to be ſo, and protects them in being ſo; ſeems to be the moſt principal Inſtitution and Appointment of God in Nature, for that it is recommended to

us

us by all that which conduces to our happineſs. And thus, and for this reaſon, are Kings and Governours ſaid to have their Authority from God, and therefore Government is called διὰ διαταγὴν, *Rom.* 13. 2. Gods Ordinance. But the forms of Governments, the Perſons of the Governours, the Order of Succeſſion, their reſpective Powers and Miniſtries, are of Mans appointment: and agreeable hereunto, Government is called ἀνθρωπίνη κτίσις or a Humane Creature, 1 *Peter* 2. 13, 24. to which the Apoſtle enjoyns us to be Obedient for the Lords ſake, and in Conſcience of our Duty to God.

Agreeable hereto is that Nobl: Tradition amongſt the Jews of the ſeven Precepts given by God to the Sons of *Noah*, that is, to all Mankind, for from him we all ſecondarily derive, in which the great Titles of the Law of Nature are declared, and to which all the Nations of the World were obliged: one of which is *De Judiciis*. The words of the Precept, which is the Seventh, are no more, ſignifying that the Law of Nature, or the Will of God in Nature, doth command us to live in Politys and under Governments. This Law was given or declared to all Mankind, when they were in a State of Nature, before Governments were conſtituted; and by that Law of Nature, obliged to form themſelves into Societies, to enter into mutual Obligations, to ſtand to and abide the common meaſures of Law, and to aſſiſt and ſubmit to the Sentences and Decrees of common

mon Judicatures. Theſe were the firſt Oaths of Allegiance that were taken in the world: but when a ſingle perſon was entruſted with the executive power of Laws, they ſwore this Allegiance to him. For in all regular Governments (as it is in this of ours) the King commands nothing but according to the Preſcript and Formula's of Law: And the whole buſineſs of Government, as between thoſe that are to be Governed, is making Laws, and executing them in a due Adminiſtration of Juſtice.

As Corollaries to what is ſaid, I ſhall add, firſt, That Mercenary Guards are very unnatural to Governments, as they ſeem, upon the foregoing Reaſons, to be inſtituted and appointed by God in Nature, which receive conformation from the Tradition and Doctrine of the Jews (the beſt inſtructed Nation in the world in the Mind of God) for that the whole body and power of the Government or Polity are bound to ſee the Law, and Reſults of their common Judicatures obey'd, and are amply ſufficient for that purpoſe. So that the head of the Polity, by the *poſſe populi*, being moſt powerfully inſtructed to execute the Laws, Mercenary Guards ſeem intended and deſigned, by thoſe that imploy them, to execute matters illegal and extrajudicial; or at beſt they make a very hard caſe upon the people, that they muſt ſupport a great charge, and pay a great price for jealouſies and fears.

Secondly, That by the natural obligation of the

the ancient Oath of Allegiance, every member of the Polity is bound to reſiſt and ſubdue all extrajudicial Forces, riotous and routous Aſſemblies.

But the nature of Government, and its true original, hath been prejudiced by an unhappy miſtake that hath long ſince invaded the world; men that underſtand nothing but Words; and Grammar-Divines, that without contemplating Gods Attributes, or the nature of man, or the reaſonableneſs of moral Precepts, have undertaken to declare the ſence of Scriptures; and infer that the Soveraign Power is not of Humane Inſtitution, but of Divine Appointment; becauſe they find it there written, that *by him Kings Reign*; imagining that when the Scripture ſaith, God commands, or doth this, that God commanded it by expreſs Words, or doth it by an immediate poſition of the thing done. Whereas in Nature his Commands are nothing but the natural Light God hath beſtowed upon Mankind: Likewiſe Gods doing a thing is only the courſe of natural and ſecond Cauſes, to which, becauſe God gives the Direction or Motion, he doth both, and is ſaid to do all that is done.

Beſides, all the Precepts that God gives us that are agreeable to the Law of Nature, muſt be underſtood as Nature and Reaſon doth direct. *Videtur Lex Dei idem dictans quod natura, ita accipi quomodo ipſa natura accipiendum monſtrat, niſi addatur aliquid Expreſſius*; Grotius *Comment. fol.* 121.

121. The Laws of God, that confirm the Laws of men, innovate nothing but a new obligation to obſerve them (but only) as commanded and intended by thoſe that made them. All humane Conſtitutions and Governments muſt be ſubſervient and obſequious to their own intentions. *Omnes res conditæ famulantur vitæ humanæ:* Every Form of Government is of our creation, and not Gods, and muſt comply with the ſafety of the People in all that it can, without its own diſſolution: and was never intended unalterable, or at leaſt inflexible, but was intended and made under reſervations, reaſonable exceptions of unforeſeen accidents, and rare contingencies in humane Affairs. And the Law of God, that comes in confirmation and eſtabliſhment of humane Inſtitutions and Laws, binds onely according to their natures and intendments.

How unreaſonable therefore are the Tragical Exaggerations of the Conſiderer, making it the moſt heinous wickedneſs, and the moſt crying Injuſtice, to alter that which in its own nature is alterable, and by an act of the Government to exclude the D. from the Succeſſion, as a perſon unfit and unſafe to be entruſted with the Government! (though in the general order thereof, he was thereto deſigned) beſides that he hath forfeited that kind of right that he had by that general appointment.

Is this, ſaith he, the way of eſtabliſhing the Proteſtant Religion? he ſaith, this is exactly to fol-

follow the footsteps of that Monster of Ingratitude, the wicked *Jeroboam*, who after God of his infinite goodness had raised him from nothing, and established him Monarch of the ten Tribes of *Israel*, yet was he so mistrustful of Gods power in preserving his Kingdom for the future, that he thought nothing could secure it but his own accursed Policy.

Our Considerer seems to have a high value for Rule and Domination, otherwise he would not have called the advancement of *Jeroboam* to rule by Usurpation, an effect of the infinite goodness of God. But these words were put in, to make that story of *Jeroboam* parallel to our case: and he intends thereby to remember us of the little power that the reformed Religion sometimes had, perhaps in the time of Queen *Mary*; and to charge upon the Protestant Religion, and reproach it with a Revolt and unjustifiable Schismatical departure from the Church of *Rome* in the time of Queen *Elizabeth*, and the acquiring and possessing it self of the Government: And now, behold the man! now you know him and his Religion, and how fit he is to offer Considerations for the D. against the Bill.

But shortly, to destroy his parallel, he may know, that the Reformation did onely assert and reassume the Rights of the Crown usurp'd by the Bishop of *Rome*: We did reform the Religion of our Church to primitive Christianity, from which the Church of *Rome* had seduced us; but there-

therein we uſed no other power than what belongs to every Church to reform it ſelf: we were never of right and duty ſubject to the Church of *Rome*, ſhe never rightfully had any Authority over us, and therefore we could not ſchiſmatically revolt from her; nor are parallel at all in this to *Jeroboam*, though this man will compare us to him, and thereby ſilly charge us with monſtrous Ingratitude to God, and accurſed policies; becauſe we will not again give up our civil Rights to the Tyranny of *Rome*, nor loſe again the true Chriſtian Religion in the Superſtitions and corrupt Doctrines of that Church; and becauſe we will not forbear to uſe that power which is lawful to every Government.

Except this be his meaning, and he himſelf a Papiſt, he might with as much pertinency have told any other ſtory of *Jeroboam*, or of any other of the Kings of *Iſrael* and *Judah*, in the Books of the *Kings* or *Chronicles*; or of *Belteſhazzar* or *Nebuchadonozor*, *Zenacherib*, *Ahaſuerus*; or *Holofernes*, or *Antiochus*, or any other King or Name in ſtory Sacred or Prophane. Of all theſe he could not have found out any thing more unlike to have compared with us, to have remarked himſelf for a man of great Conſiderations. For *Jeroboam* corrupted the true Worſhip of God to ſupport an uſurped Crown; but the deſign of the Bill againſt which he declaims, is to ſupport a lawful Government, and the beſt Religion by a legal Act of that Government.

So that we will invert that Wo which he pronounceth againſt us out of the Prophet; *Wo unto him that buildeth his houſe by unrighteouſneſs, and his chambers by wrong*, into a Wo againſt himſelf; *Wo unto him that putteth evil for good, and darkneſs for light, and caſteth a ſtumbling-block before his neighbour.*

But in what follows of this Writer of Conſiderations, I doubt me whether he doth not act the part of a ſcorning Atheiſt; for that he would perſwade the world from all care and regard of Religion, by telling us, it is able to ſhift for it ſelf, it being the work of Gods own hand. His atheiſtical ſcorn and low valuation of the true Chriſtian Religion, is further very notorious and remarkable, for that he makes the eſtabliſhment thereof amongſt us to be ſuch a like work of the Almighty Hand of God, that eſtabliſh'd *Jeroboam* in the Kingdom of *Iſrael*. O thou *Inſenſatus Galata!* to return thy own Exclamation which thou uſeſt againſt thy own honeſt and diſcerning Country-men, upon thy ſtupid ſelf: For who, I pray you, but a ſenſeleſs man, would compare a providential permiſſion of the revolt of the ten Tribes for the ſins of *David*, and the ſins and oppreſſions of *Solomon* (to which the people were prepared by the exactions, oppreſſions, and riotous Reign of *Solomon* and his Succeſſor *Rehoboam*) to the work of the Reformation, which was the delivery and reſtoring to it ſelf the Goſpel of Chriſt, and his true Religion,

(which

(which was ſpoiled and depraved by the *Church* of *Rome*) for the benefit I doubt not of all the Ages of Mankind to the end of the World; againſt which the Gates of Hell ſhall not prevail; and which we in diſpight of the *Roman* Succeſſor ſhall ſee yet flouriſh in this Land.

But we muſt not expect, though God did firſt plant his Church by Miracles in Nature, and demonſtrations of the Spirit of Power, by the wonderful Gifts of the Holy Ghoſt, and by the Spirit of Glory reſting upon the Primitive Martyrs of the Holy Faith, and did reſtore the purity of the Chriſtian Faith by a Miraculous Providence and the Spirit of Martyrdom, which we are now peacefully and Legally poſſeſſed of; I ſay, we have no reaſon to expect Wonders for our preſervation, when it ſeems to be in our own hands: Nor ought we to ſubject the profeſſors of the True Religion again to Slaughters, Fire and Faggot, Tortures, Inquiſitions and Maſſacres.

Let us not think that our Government, as it lies in Hiſtory, and our Laws in Books and Parliament-Rolls (which will eaſily ſuffer an *Index expurgatorius*, and make no complaint,) can defend us and it againſt the Inſtruments and Engines deſigned for its ſubverſion in the Plot, and the powers that have been long addreſſing to that purpoſe, and are now at leiſure to execute what we know is deſigned againſt us, better than we can make out and diſcover. This Expreſſion, I know, would ſcarce paſs for ſenſe in any other

Age or Matter, but we live in an Age of Myſtery and Prodigy, producing things monſtrous and unnatural, and our Language muſt be agreeable to the things we ſpeak of.

The True Patriot proceeds and affirms, That it is an unwarrantable Attempt, and a point without example or preſident, to Depoſe a Prince for not complying with his people in Religion. I appeal to all that ſhall read him, whether he appears to be a man of Reading enough to warrant him to pronounce a general Negative in this matter? But by this time there is nothing ſo extravagant but you will allow agreeable to the man. I believe immodeſty is the unhappy Vice and Fate of his Nature, for no man ever arrived to the like Degree in it before him: you muſt not ask what he means by a point without example or preſident, or why he puts us a point that is not in our Caſe, and ſtill will be talking of depoſing a Prince; for this man oweth no account of his matters. But, thou Falſe Conſiderer; So Loyal I am, That I would not have that point in the Caſe for half I am worth.

But pray why thus impertinent? why doſt thou ſend us to *Aſa* and *Maachah*, *Jeroboam*, *Reboboam*, *Jehu* and *Joram*, *Aſa* and his Mother, and *Azaria*? we know little of the Conſtitution of the Jewiſh Monarchy, ſave that God after the Jews had rejected his Government, and deſired a King, kept ſome remains of his Theocracy over them, which he adminiſtred by his Prophets whom

whom he Commiſſioned to Exauctorate and Anoint Kings. Their Hiſtories are ſhort; but beſides, every Nation is to be governed by their own Laws, and there are as many kinds almoſt of Governments as there are Governments; we are not warranted by their Preſidents, nor to be Juſtified or Condemned by them; but we muſt Stand or Fall to our own Laws. But let this Patriot know, that our caſe will never be *Cromwels*, (as he reproaches us,) and we will not, neither can we ſtand in need of any Apology that would ſerve either for the *Rump* or him; for we are preſerving that Government and Church which they deſtroyed.

Neither will we, O man of ſmall Conſideration, make uſe in our defence of the Papiſts excluding the King of *Navarr*, a Proteſtant King in *France*: No more than we will allow the *French* to murder a Proteſtant Miniſter, becauſe we execute a Seditious Traiterous *Roman* Prieſt: No more than we can allow in others, or juſtifie in our ſelves to proſecute diſſenting Proteſtants, whoſe Principles are peaceable and obedient to Governours: Becauſe we duly ſharpen our Laws, and exact the Severity of them againſt the Papiſts, the ſworn enemy to all Religions but their own, and to all mankind upon the ſcore thereof. How groſly therefore is that of the Apoſtle miſapplyed, *Whoſoever thou art O man that judgeſt another*, &c. For doth a publick Executioner incur the Judgment of ſhedding mans Blood, for

executing a Sentence against a Murderer. Thou man of Observation mayst possibly know what kind of Beasts we muzzle and tye up.

He observes for our Imitation, That the Orthodox did not Depose the *Arrian* Emperours: we ought undoubtedly to imitate them therein; for that no man, much less a Prince, ought to lose any right for a Speculative Error, or meer mis-belief: But onely for wicked practices and opinions that promote, excite and encourage them. But it is also very observable, which the Considerer, by his mention of *Julian* the Emperour in this place, gives me occasion to offer: That the Behaviour of the Church towards the Pagan *Roman* Emperours, was much different from that which they bore to *Julian*, who succeeded to Christian Emperours, was educated a Christian, and sometimes bore a place in the Church: for whereas the Apostles had enjoyned the Christians to pray for the Pagan Emperours, though actual Persecutors of the Church; yet the whole Church did Curse and Anathematize *Julian* with an Anathema, *quo Deus rogatur ut aliquem è medio tollat. In Julianum cum defectioni adderet machinationes evertendi Christianismi, usa est Ecclesia isto extremæ necessitatis telo, & à Deo est exaudita.* Grotius in Luc. Cap. 6. Vers. 12. I will not trouble the Reader with more Quotations to this purpose; the Authority of this Great man is more than ten Witnesses. And for what he lays down generally, that the Orthodox did not Depose the

Arrian

Arrian Emperours: I muſt remember him out of *Socrates* the Eccleſiaſtical Hiſtorian, *lib.* 2. *cap.* 38. Gr. when the Souldiers of *Conſtantius* the *Arrian* Emperour were by his command ſent to enforce them to become *Arrians*, they took Arms in defence of their profeſſion of Religion; how juſtifiable therein, I will not now diſcourſe. But this may be ſaid, that the Chriſtian Religion with indifferency to all Sects, was made the Religion of the Empire by Imperial Reſcripts, and all Chriſtians had thereby a civil Right to a free and undiſturbed profeſſion of their Religion in their ſeveral Perſwaſions: For *Conſtantine* the Great carried ſo indifferent an hand between the Contending Parties, that he endeavoured to make Peace rather by ſilencing the Diſputes, than by determining the Controverſie: Worthy of the imitation of the Guides of Chriſtendom; and the onely means of freeing the Reformed Religion from being depraved by the Jargon and Gibberiſh of the Sectaries.

If the Crown ſhould devolve upon the *Roman* Succeſſor, it would require conſideration, whether we could juſtifie the Dethroning of him; though the *French* Papiſt could not be juſtified in rejecting the King of *Navar*.

But this untrue Patriot ſhifts his Cauſe from what it is, to what it is not, that he may have ſome colour to inveigh againſt the true Patriots, far more excellent and righteous than himſelf; and have ſome umbrage to betray the beſt Reli-

gion and the beſt Government, while he pretends with falſe Hypocriſie to ſupport them.

But I am glad to find in him at leaſt one grain of Senſe and Honeſty; he ſaith well (to do him right) that is the beſt Religion that gives every one his due. But he muſt conſider farther, to the confuſion of the Cauſe he Advocates, That to give every one his due, is to adminiſter Defence to the Innocent, and by authority of Law to ſubdue the aggreſſors of Mankind, how great and mighty ſoever they be; for they that are mighty Offenders, ought in proportion to be mightily puniſhed; *Fiat Juſtitia* therefore, as he ſaith, *Ruat Cælum*: for, to puniſh, much leſs to lay a reſtraint upon evil perſons, is *not to do evil that good may come of it*; which he would impute to the proceedings in Parliament againſt the Duke, for which he muſt be ſelf-condemned, for I cannot take him for a *German* Anabaptiſt.

And now we find this Conſiderer complaining of ſome Pamphleteers, that write ridiculouſly ſophiſtical, and unreaſonable Reaſons; that tell ſtories (he ſaith) of *Edgar Athelin*, *William the Conquerour*, *Arthur Plantagenet*, and King *John*; that write Antichriſtian and Fanatical Logick, never heard of, until the Spirit of *Belial* revealed it to *Oliver* and the *Rump*. I believe, if there be any ſuch Pamphlet, this Pamphleteer is the Author of it, or ſome of his Complices: to the purpoſe that there might ſeem ſome one worſe than his own; and that he might be able to

to quarrel with, and confute, and do advantage to his bad Cauſe by ſome worſe Reaſonings than he would ſeem to be Maſter of, or than his Cauſe is capable of, which is not capable of a good one.

But what he ſays cannot poſſibly be true of any Pamphlet; but rather than he will not be ſlandering, he will ſlander himſelf, and belie the Devil: For obſerve, he ſaith, they uſe Fanatical Logick, and Antichriſtian Logick. The true Fanaticks, being impatient of the reſtraints of Reaſon, and to be confined to ſober ſenſe, call Logick and Reaſoning by that which they would ſeem moſt to hate, Antichriſtian. The true Antichriſtians and Papiſts, being impatient of the light reproof and diſcovery of Reaſon, call ſound Reaſon Fanaticiſm. But our Writer is ſo vengeancely angry with reaſoning, that with the ſame breath he calls Logick, for the ſake of reaſon, Antichriſtian and Fanatical too; and renders himſelf ſuſpected of being an Antichriſtian Fanatick.

And yet any one may ſee, that it is not the thing it ſelf that he is thus angry with, but the name of Logick that he thus expoſeth; for what it is he knows not, he ſeems to think it comes by Inſpiration, and that there are two ſorts of Logick; one good, but he is not acquainted (for all that appears to us) with the Spirit from whence that is derived; and another bad, which, he ſays, is inſpired by the Spirit of *Belial*; whereas

as moſt certainly there is no ſuch Devil amongſt all the Orders of the Apoſtate Angels: Sons of *Belial* I have heard of indeed, that did evil without profit, without deſign, for evils ſake; but theſe are ſuch men as need no Tempter; for they will be wicked without a Tempter, according to the fatal propenſions of their vitious Natures, and are not to be managed by the Devil himſelf: And to this ſort of men doth our Pamphleteer ſeem ſomewhat to approach, for that he is an unaccountable Tranſgreſſor.

No reaſon can be given of him, why he ſhould with ſo much ſeeming earneſtneſs concern himſelf to perſwade the people to abandon to an utter neglect thoſe things that of all others are of moſt value to them, their Religion, Government, Lives, Liberties and Eſtates. To perſwade a whole Nation to lay violent hands upon themſelves, to cut their own Throats, to burn themſelves alive and their Houſes; and to deſtroy themſelves, their Wives and Children, Bodies and Souls too, for conſcience-ſake. That there can be a ſubject not ſubject to Laws; and that offences that cannot be rated, becauſe their miſchiefs are infinite, for that very reaſon muſt not be puniſhed; and he would have us reckon it a ſin of the moſt heinous nature, to puniſh the Offender with a diminution only in his power to do thoſe evils which are moſt notoriouſly by him deſigned, and will be effected by means of his own making and cauſing, if he himſelf ſhould relent

relent and refuſe to execute them. If in this Age of Licenſe, immodeſty could entitle any man to be a ſon of *Belial*, our Writer of Conſiderations might fairly pretetend to it, who is immodeſt for impudence ſake, which ſpends it ſelf in waſte, and cannot effect any thing but the expoſing it ſelf. In ſaying this, I ſhould think my ſelf very ſevere, but that he hath publiſhed his own ſhame; and if I would, it is not in my power to cover it.

But he hath not ſhewed the worſt of himſelf yet, he attempts further upon the Underſtanding of the People; he will have us believe that we owe Allegiance to the Preſumptive Heir; that we have as many Kings as Princes of the Bloud; and that a Son hath a right to his Fathers Eſtate before he is dead: For the probable Succeſſor can have no more right to the effect of the Oath of Allegiance, than the eldeſt Son to receive the Profits of his Fathers Eſtate without his leave in his Fathers Life-time.

If this Gentleman's Father had had any Land, he would have underſtood the difference between his right to the Land after his Father's Death, and his hopes and poſſibility onely to have it during his Father's Life. The word Heir is joyned with Succeſſor in the Oath of Allegiance, to ſignifie, that it means Heirs in the proper ſence, which is ſuch that ſucceed to the Inheritance; and not ſuch that are in expectancy or poſſibility of having the Inheritantce, who are improperly

and

and equivocally ſo called. And though the thing is ſo plain, that every man as well as the Lawyers agree what is ſaid; yet my Lord *Cook*, for ſaying the ſame, is called by this Gentleman, Silly and Ridiculous, Fallacious and Impertinent.

The Lawyers tell me, that it is a Rule in the Law, *Non eſt hæres viventis*; that is, No man can have an Heir while he lives; and they likeways ſay of all the *Regulæ juris*, There is not one of greater extent and rule than this; that it hath governed Ten thouſand Caſes near upon in the Common Law; and they withal aſſure me, that notwithſtanding this man (amongſt other civil terms) calls the Lord *Cook* Fallacious, they firmly believe, if a Fee had been offered to him of the value of his Eſtate, which is about 200000 *l.* he would not have ſigned an Opinion with a *Videtur* to the contrary; but he is reſolved that all Mankind ſhall be miſtaken, and he will call their reaſonings in this matter what he pleaſeth; New Machiavillian Logick, a word that diſhoneſtly he took up, on purpoſe to expoſe the Bill to the Vulgar, imagining in his profound Conſideration, that ſome of the Multitude will, upon the hearing of *Machiavillian*, fall thereupon into an unwitting diſlike of the Bill.

Nay, he will conclude an Heir Apparent to be an Heir, becauſe he could not be Heir Apparent unleſs he were an Heir; when the word Apparent and the word Preſumptive more eſpe-

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cially joyned to Heir, is a term of Abatement or Negative, and diſtinguiſheth him from being a real Heir, and ſpeaks him no Heir, but onely one in a near poſſibility of being ſo. But, ſays he, it is a manifeſt contradiction for one to be Heir Apparent, and not to be Heir; as it is to be a Learned man and no man. *Prius eſt eſſe, quam eſſe tale.* I wiſh we had his Name, that we may mark the moſt abſurd reaſonings by it, for the everlaſting honour of this Pretender to Reaſoning and Diſcourſe. We all know that the word Heir is a Name to deſign a perſon under ſuch a relation and reſpect, and imports nothing of entity; and we may uſe our own abſtract Terms properly or improperly, and without any correſpondent reality, to an equivocal ſence.

But he adds Profaneneſs to his Levity, and as if the Holy Scriptures were writ to ſo trifling a deſign, as to be an Oracular Dictionary, and Infallible Nomenclature; he tells us how the word Heir is uſed in Scripture, when the holy Writers formed their Language by the vulgar Idiomes amongſt the people of the Jews, and never intended to write Law-Caſes, much leſs to declare the Common Law of *England*, or imagined that their ſtile ſhould be produced to expound our Oaths of Allegiance and Supremacy.

But now, thou vain Conſiderer, wilt thou hence conclude, that the Duke of *York* is Heir and Succeſſor? That we now owe him Faith and Allegiance? that he is already in the Throne, and

and that this Bill, though it pretends onely to forecloſe him, doth truly depoſe him?

It is inſufferable, that this man ſhould impute to the Houſe of Commons, and the beſt People of *England*, *Diabolical Fiction, the worſt of all Jeſuitical Equivocations, and of endeavouring to make a colour to their perfidious and perjurious dealings*, for theſe reaſons onely, becauſe we will not believe, or take our ſelves to have ſworn Allegiance to the Duke of *York*, when we ſwore it to the King: Becauſe we will not allow that a Parliament of *England*, which is the King, Lords, and Commons, have no more to do with our Government than the Pope of *Rome*; or that the Pope hath as much power to depoſe one of the Kings, as the Parliament hath to puniſh a moſt obnoxious Subject: This he dares addreſs to the King, and publiſh to the World.

He proceeds to preſume and tell us, that this at leaſt muſt be granted, that whoſoever is by Bloud next Heir to the Crown, we are by our Oath obliged before God to bear him Faith and true Allegiance; nay, to defend him againſt all attempts, until he is diſinherited by Act of Parliament; and therefore, ſays he, whatſoever we do againſt him, before this Act be fully eſtabliſhed, is a violation of our Oath, and therefore the very attempt of voting and paſſing this Bill, makes the actors and abettors Perjurers before God and the World.

Sure it will be allowed, that this Gentleman is miſta-

miſtaken; ſure he doth not intend to ſpeak Treaſon, but hath a way of ſpeaking which he will uſe by himſelf, and will make Words ſtand for what he hath a mind to: which Will and Pleaſure of his, this peremptory abſolute man thinks himſelf not bound to explain, though to ſave his Neck, if he ſhould be Indicted therefore of Treaſon, which I deſire he may, and Arraigned too, for the better clearing the matter, if it be poſſible, how we are now bound to bear Faith and true Allegiance to the Duke: But he will ſooner be Hanged, than make out how a thing may be done Lawfully, which is not Lawful to go about: That the Duke of *York* may be lawfully Diſ-inherited, but the Voting and Paſſing of the Bill muſt be Perjury. May not he that is bound by an Oath to pay money, deſire a releaſe from the Debt without Perjury? Cannot all civil Debts, Duties and Contracts, though confirmed by Oath, be diſcharged by the Intereſted perſon, to whom the Duty is to be performed, and for whoſe Benefit the Contract is made? May not Kings, by renouncing their Governments, make the Oath of Allegiance ceaſe to all effects of Obligation? And cannot an Act of Parliament that ſhall diſable a Succeſſour, equally prevent it from paſſing any Obligation upon us?

But ſhortly to explain of what Import, and for what reaſon the words Heirs and Succeſſors are put into the Oath of Allegiance: and it is this, That

That in caſe of the Demiſe of the King, and the Devolving and veſting of the Crown upon the Heir and Succeſſor, the Oath that we took to the Predeceſſor, by virtue of thoſe Words laies hold upon our Conſciences, and obligeth us to him from the firſt minute of his Reign, but not before; and ſo we are not one minute free from the Bonds of our Allegiance. This being the ſcope of the Law that requires it, and of the Oath it ſelf, it muſt likewiſe be by that interpreted; for *finis dicendi eſt ratio dictorum*, and an Oath doth not oblige as this or that man would interpret, neither according to the vulgar or technical uſe of the Word, but in ſuch a ſenſe as is adæquate and agreeable to the Intent and End of the propoſing and requiring it.

But by what is ſaid before, it appears that we are not yet under the Obligation of that Oath to the Duke, and that it is in the Pleaſure and Power of the Parliament, whether we ever ſhall be; our Comfort is (whatever he thinks) that there is a great difference between Hopes and Enjoyment: And further, it appears that the Heir Apparent is but equivocally, and in a leſs proper ſenſe ſo; and yet this Conſiderer (who if he be not a perfect Atheiſt, and ſerves a turn in this Paper, muſt be a Papiſt in his heart) according to the Modeſty of the Gentleman, chargeth us with Jeſuitical Equivocations in the Oath of Allegiance, while in the mean time he is equivocating the King out of his Throne, ſhifting the Duke into his

his place, by an æquivocal Abuſe of the word: the courſeſt ſlight that ever was uſed by any *Hocus Pocus*, or any Pretender to *Legerdemain*.

And yet upon the Confidence of theſe weak and miſtaken Reaſonings, he preſumes to arraign the Houſe of Commons of the greateſt Injuſtice and Iniquity, and would have us apprehend Slavery the Arbitrary and Deſpotical Power of Parliaments. The loſs of all Security either of Property or Liberty, by a prevailing Faction of Parliament; which he will be able to effect at the ſame time when he can perſwade us to diſſolve the Polity, and exchange the beſt and ſafeſt Government into an Anarchy. To be without Judges, for fear of unrighteous Sentences; and without a Power of Legiſlation, for fear of Laws of Iniquity. But it is not a new thing for obnoxious Criminals and Out-laws to turn Rebels againſt Government.

What this man is, and what the Cauſe is he Eſpouſes, is declared ſufficiently, in that he hath no better ways of Advocation and Defence, than by Oppoſing and Reviling the Government it ſelf; and he that dares revile the Government, would, if he had Power, Deſtroy it.

In that he calls the major part of the Houſe of Commons a Prevailing Faction, I challenge him Guilty of the Higheſt Treaſon, of a Treaſon not onely againſt this Government, but of a tranſcendent Treaſon, of a Treaſon virtually againſt

all mankind, for that we cannot ſubſiſt without Polities, and no Polities can ſubſiſt but by deference to the reſults of the Governing Power, which is Interpretatively in the reſolves of the major part.

But he proceends to queſtion, whether, by the Conſtitutions of this Government, the Parliament can extend their power to ſhut out the Duke from ſucceeding to the Crown; for admitting (he means) That it is Juſt, which we will not accept of as a voluntary conceſſion of this Conſiderer, (for that it doth appear not onely Juſt, but highly neceſſary, to exclude the Duke by Bill) he will then draw it into queſtion, Whether there be any competent power in the Government for doing a thing not onely juſt, but abſolutely neceſſary for the preſervation of the King and Kingdom? Whether there be any Subject too great for Juſtice, or any private Right that is not governable, and may not be ordered as to the Legiſlature ſhall ſeem neceſſary to the preſervation of the whole? Whether that which is properly the Right of the Community (for ſo is the Succeſſion) may receive no alteration in a ſingle inſtance, for the Weightieſt Reaſons? and whether he that declares that he will not Govern, but Deſtroy, and doth virtually renounce the Government, may not be left out of the Succeſſion? This is the true ſtate of the Queſtion; and the Queſtion thus ſtated, gives its own ſolution; And who, except thoſe of the

the Conſpiracy, do not ſo ſtate it, and allowit?

As to his Queſtion, Whence the Parliament derives theirPower: let him know,that the Parliament derive their Power and Authority from the ſame Original the King derives His: The King hath not His Power from them, nor they theirs from the King: They both derive their Authority from the Conſent of the People in the firſt Conſtitution of the Government, either tacit or expreſs, or by their expreſs or tacit Conſent, in the inſenſible, and little, or great, and more remarkable alterations that the Government hath ſuffered in the courſe of Time.

The King can make the Parliaments Power no greater than it is, nor they His. Though true it is, he may put an unlimited Truſt repoſed in Him, into Stated Laws, and Govern by Counſels eſtabliſhed into Laws; which is not to alter or leſſen His Power, but to make it more Safe and Wiſe, and impeccable in the exerciſe of it. He may aſcertain the indefinitneſs of His Power, that it may not be abus'd. And that King doth beſt provide for a happy and wiſe Adminiſtration of his Government, who leaves the feweſt things to fortuitous reſolves, who reduceth his Prerogative to the meaſures of Common Right, and makes the Kingdom ſecure and ſafe, by leaving the Succeſſion leſs Capacity and Scope to do miſchief.

It is moſtly incumbent upon his Sacred Majeſty to ſecure the Government committed to his

Care, and keep it upright, and ſteady upon its own Baſis, and to preſerve all things in a due and Legal Courſe: To watch to prevent all machinations againſt it, and ſuch as would deſtroy and ſubvert it; and by his executive power of the Laws, obtain to us the ends of Government, that we may live quiet and peaceable Lives in all Godlineſs and Honeſty. For the ſake of this High Truſt, and the Dignity of this Office, his Perſon is moſt Sacred and Inviolable.

The King and his great Council providing for the eſtabliſhment and ſecurity of the Government in their proceedings are not tyed up to forms of Judicial proceedings; but are to act upon ſuch inducements, and in ſuch methods, whereby the Wiſeſt men govern their affairs; in which they are at perfect Liberty, and not under the reſtraint of Laws. They cannot do unjuſtly, whatever methods or means they uſe, that are prudentially and morally neceſſary to this End.

This power can be no more wanting in Governments, than we can be without Government: That which eſtabliſheth the one (which is the Law of God declared in the Make and Frame of Humane Nature) affirms and allows the other.

By the Authority of this Law of God ſo declared and promulgated, as I have told you, *do Kings Reign, and Senators or Princes Decree Juſtice.* By virtue of this Law, and in Obedience to it, is this Bill fram'd (againſt which this Conſi-

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derer declaims like a ſpeaking Brute.) From this Law of God, the ſaid Bill when it paſſeth into a Law, will have its Approbation, Sanction and Eſtabliſhment.

But againſt this Bill, with his accuſtomed Truth, Candor and Modeſty, he doth Object, That if ſuch an Authority ſhall belong to the Parliament, as to diſable one Succeſſor upon ſuch inducements as are ſufficiently known; a Parliament ſome time or other may be corrupted by a King, and by mercenarineſs comply with him to ſell the Succeſſion of the Crown to a Foreigner. We all well enough know, that this Bill is deſigned to keep out the Tyranny of *France*, or at leaſt, the *French* Tyranny: But for this I leave the King to reckon with him and the Penſioners of the late long Parliament.

The Gentleman continues to add the ſtory of *Ahab*, contriving to poſſeſs himſelf of *Naboth*'s Vineyard, by cauſing him to be falſly accuſed of Blaſpheming God and the King; by which, if true, by the Jewiſh Laws *Ahab* had been Juſtly entitled to it as a Royal Eſcheat. But if he had not been as ſtupid as a Block, he had not mentioned this ſtory, which is a preſident and an adjudg'd caſe againſt himſelf; who, but a Line before, had ſo vilely Blaſphemed ſo great a King, a far greater King than *Ahab*, though the Parliament divide ſome Authority with the King in the Government: But what were the Conſtitutions of the *Jewiſh* Monarchy, this Writer of Con-

ſiderations, I am ſure, knows no more than his Foot-boy. But let him know, that the *Romiſh* Religion is a Blaſpheming God; and to bring the Kings Life in danger, is worſe than to Blaſpheme him. See what wiſe Work this Conſiderer makes; when, forſooth, he would argue, That the Duke of *York* cannot be ſhut out of the Succeſſion, no more than *Ahab* could take *Naboth*'s Vineyard from him.

The man of Weighty Conſiderations tells us in the next Paragraph, That God was incenſed againſt *Eſau* for ſelling his Birthright; and therefore the Duke muſt not loſe his, contrary to his Will, and all Juſtice, by a prevailing Faction of his Inferiours.

Who ever told him, That God was Incenſed againſt *Eſau* for ſelling his Birthright? Did not God purpoſe the Birthright to *Jacob*, before the Brothers were born, and before they had done Good or Evil? could God be angry with him for agreeing and executing his own Purpoſe and Decree? Did not *Iſaac* and *Rebekah* both know and underſtand the Oracle, and in Obedience to it, *Jacob* was effectively Bleſſed by his Father *Iſaac*'s confirming the Bleſſing firſt gotten by ſurprize, and by the Solemnity of that Bleſſing, his Father *Iſaac* transferred the right of the Promiſe made to *Abraham*, to be fulfilled in the Line of *Jacob*? indeed the place he quotes in *Heb.* 12. 17. is this, *Let no Whoremonger or Prophane Perſon be amongſt you, like* Eſau, that would prefer a Senſual pleaſure before the great things

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that were promiſed by our Lord to them that obey him. Wherein the mention of *Eſaus* Story, is only to illuſtrate and ſet off what they fell ſhort of the Grace of God, and the deſigns of his Holy Inſtitution. Indeed, if he could prove to us, that his Royal Highneſs, being the younger Brother, had any ſuch thing tranſmitted to him in his Generation, as the *Jews* called the *Segulah* (by which they mean ſome peculiarity, which did appropriate the Right of the Promiſes made to *Abraham*,) which *Jacob* had, and *Eſau* wanted, they ſay; If he had any Divine mark upon him (beſides the Contingency of his Birth) that deſign'd him & mark'd him for a King, beſides *Roman* Zeal, there would be ſome Conſequence in his Diſcourſe, and this would be the beſt Argument that he hath yet uſ'd (though the King would be little beholden to him for it:) But where God doth not interpoſe by expreſs Revelation, Humane Affairs, Concerns and Intereſts of all ſorts, muſt be Governed and Ruled by the Laws, Orders and Decrees of the reſpective Governments. I would not have been ſo long in animadverting upon this laſt paſſage, but that I think our Conſiderer hath taken into his aſſiſtance in theſe Conſiderations ſome Divine, by his abounding ſo much in Scriptural Allegations: And that hereby you may ſee the Size of the reſt of the men of that Order, that are Chaplains to the Cauſe of the Succeſſion, and that they ought to be of little regard in this matter, as they deſerve none; it being not in their

way: though in matters that belong properly to their Function, they may deſerve much who are of the meaneſt of that Order.

Our Gentleman next proceeds to his political Arguments; but thoſe can be anſwered, I perſwade my ſelf, by every man who hath heard of the Plot. Though a man of his Size may frame puzzling Arguments that may perplex mens Minds with ſcruples and doubts; which a Fool may do, and a Wiſe man cannot remove; yet it is ſcarce poſſible for him to deprive men of their Senſes, and make them inſenſible to all the Evils that they hear, ſee, and feel, and juſtly fear. If the Proteſtants are not (as he ſaith) very ſtrong abroad, we have reaſon to be more united at home, and united by the awful Authority of a Law. If we are threatned with a great power of the *Roman* Religion from abroad, (which he affrights us with) we have no reaſon to retain the biggeſt power to hurt us within our own Bowels. But if it be in the power of ſuch bad men as this Pretender to divide by ſlights and wiles the good people of *England*, and keep them from uniting in the onely means of their ſafety, we muſt periſh: But Wo be to them by whom we are thus deſtroyed.

His laſt effort upon the minds of the People is to intimidate them, that by their fears they may fall under the evils they deſign upon us: he ſcatters his menaces, as if he were in the place of God againſt us, and as if he had the executing of the

the Plot in his Power, and tells us of ſins that fit us for ruine. It is convenient to theſe Plotters to imagine us mighty wicked, that they may believe we deſerve the Vengeance they deſign. Our Government it ſelf, our Laws, our Religion muſt become wicked, when they arrive to a probable power to hurt us: They never contrive a Gunpowder Plot, a Maſſacre, or burning a City, but they dream the iniquity of the People is grown ripe; They would turn us into *Sodom* and *Gomorrha* (which this Conſiderer frights us with) if they could call for Fire from Heaven; and then publiſh us to all the world (if we were much better than we are) to be as wicked as the Cities of the Plain. If we cannot obtain this Bill, I ſhall then begin to think, that the Decree is gone forth, and our Fate is approaching, and that God will let theſe Villains have their will over us. By Gods diſpleaſure, not theirs, I ſhall take the true meaſures of our Sins; His diſpleaſure will be remarkable and evident, if he ſeems to deny us the means of our Safety and Preſervation, and which is the onely means of the Kings Salvation from their Traiterous deſign. If this Bill do not paſs, they will take him for a wicked King too; and they will ſay, he hath no lawful Iſſue to ſucceed him, for his own ſins (though our Conſiderer ſaith at preſent, that our Sins are the cauſe of it) and many other remarks of wickedneſs they will make upon him, when they find it convenient and for their intereſt to deſtroy him;

him; at beſt he will be then but Tenant at Will to them of his Life, as well as his Crown, which this Conſiderer moſt ſlanderouſly chargeth to be deſigned by us: but if he will follow the counſel of that excellent Bill, he may live long, and ſee good days, and peace upon our *Iſrael*; to which let all good people ſay, *AMEN*.

I ſhall onely remark two or three things in the cloſe of the Paper of *Weighty Conſiderations*. Firſt, that he undertakes to ſay and affirm, that the King is as much ſubject to the Power of the Parliament as the Duke; which doth dethrone the King himſelf, and leſſens him to the degree of a Subject. Secondly, that in this his Addreſs he perſwades the King to rend the Government, to lay aſide the Commons of *England*, and abandon them as Rebels; to divide from them, and govern by a Houſe of Lords and Privy Council. And thirdly, that the moſt venerable and Loyal Parliament that ever was conven'd in this Nation, though not ſo clearly purged from the corrupt Villains of the late long Parliament, as the next we hope will be, are charged by him to follow the Anarchical encroachments of the Factions in the Rump-Parliament; by which he inſinuates that we muſt become Papiſts, admit of a Popiſh Succeſſor, or be uſed as Rebels and Traitors: by theſe three remarks it is evident, what Principles and Deſigns theſe men are of, that oppoſe the Dukes Bill; and from thence you may find reaſon to aſſiſt it, and promote it with

with the greateſt unanimity and reſolution; and the rather, for that the Duke himſelf cannot want Conſiderations to diſpoſe him to approve of it.

For what ſhould he do with a Crown that he cannot wear? Why ſhould he accept of a truſt that he cannot diſcharge, and a Government that his Principles oblige him to transfer to a Forein Prince? he is too generous a Prince to enter upon a Province onely to betray it.

He is a Prince of great Charity: it was that ſurely mov'd him publickly to confeſs the *Roman* Religion, that he might thereby recommend that Religion to our belief, for the better reforming us from Hereſie: Why then ſhould not the ſame Charity move him to renounce the Government, leſt he ſhould offer an irreſiſtable temptation to the People to a Rebellion? a greater ſin accounted by a King, though a Catholick, (however the Prieſts rate it) than an errour in belief.

But how can we imagine that he will condeſcend to be our King? He doth not intend to accept of our Oaths of Allegiance, and had rather not be King, than we ſhould be his Subjects upon thoſe terms. Why ſhould we trouble him with the name of King, reproach him, call him Apoſtate, Heretick, and Infidel, by ſwearing our ſelves his Subjects in the terms of the Oaths of Allegiance and Supremacy? Pray think no more of it, write no more *Great and weighty Conſiderations*; for he intends to be no more your King, than

than he doth to desert his Religion and the *Roman* Catholick Faith.

Besides, his Zeal and Services, and the Difficulties that he hath undergone for that Church, and the hazards he hath incur'd, deserve the best place, and highest office in that Church, which is that of a Priest; he ought not to be put off, and meanly rewarded with the Sheriffalties, which their Eminencies of the Conclave despise, and be prefer'd to all the Drudgeries and Cruelties that the Priesthood of that Church require of the Kings of that Communion that become Zealots.

He is a Prince that can deliberate and consider, and will conclude, that it is better for him to betake himself to a Monastery now, before he hath filled the Land with Blood and Slaughter, and all the mischiefs that the hellish Plot designs upon us, than to take Sanctuary in one hereafter, loaded with the melancholy considerations of a lost design, and intolerable guilt, if he himself should chance to survive, and not perish ingloriously in the enterprize, never to be gathered to his Fathers, and shut out of the Sepulchers of Kings.

He is a great lover of his Brother, as he ought in gratitude to be, who lets him live, and in his good opinion too, after he had departed from his Allegiance, and become a Member of another Hostile Polity and Regimen, and after, in consequence thereof, the Kings Life is brought in conspicuous danger: Besides, that it was natural

ral and neceſſary that attempts upon the Life of the King ſhould enſue upon his publick declaration of himſelf to be a Papiſt. And we cannot, without thinking too meanly of him, think him without a foreſight thereof: there remains therefore no way for him to avoid the guilt of his Brothers Murder, (we tremble at the probability of it) than by renouncing the Crown. The King cannot in probability die before him, except he falls to the Intereſt of that Religion which his Highneſs doth profeſs. So that the Duke will relinquiſh nothing by the conſenting to the Bill, but the hopes to ſucceed upon his Brothers Murder; but he would not the one (ſo virtuous we will think him) to obtain the other.

Admit him to be King, he muſt be a King without Subjects; for he muſt be a Slave to one part of the people to deſtroy the other: theſe may not be, the other will not be his Subjects.

To be an open Enemy is more Princely, than to ſubmit to the ſordid methods of Falſhood and Treachery, than to betray us and deceive us in the confidence we juſtly ſhould have in him, if he ſhould ſucceed to the Crown by a legal appointment. He hath already departed from the Government, which is Treaſon in a common perſon; but we will give it in him an honeſter name, and call him onely an Enemy to our State and Religion, and his departure to be an overt declaration of Hoſtility; let him therefore be conſiſtent

ſiſtent with himſelf, purchaſe the Government by Conqueſt, by the aſſiſtance of the Arms of *France*, his Popiſh adherents, and home-bred Traitors. But let him not aſſume the Crown by Title and Succeſſion, under obligations to govern by Law, and to preſerve us in our Religion, which is our Legal Right, and more precious to us than any thing elſe the Law entitles us unto. Let him not add falſhood to his miſtaken and cruel zeal, and do all the miſchiefs the Plot deſigns, while he pretends to Govern. Let him openly aſſault us Miſcreants, ſubdue us Infidels, that already ſtand Curſed and Excommunicated, whom he hath Warrant enough from his Religion to deſtroy with an utter deſtruction.

He is an excellent Son of King *Charles* the Firſt, of bleſſed Memory, who died a Martyr for the Government of Church and State, and loſt his Life as well as his Government, when he could not preſerve it any longer by his Sword; And do you think that *James* his Son, who carries the Royal Name of his Grandfather, though the firſt of *England*, yet the Sixth of that name in *Scotland*, will ſuffer the Government to be altered, and to be a King and no King? It is more juſt for him to chuſe an Excluſion from the Succeſſion, than to ſuffer the Government to be changed; we muſt therefore ſuppoſe him to be willing rather to conſent to the Bill and renounce the Succeſſion, conformably to the recent example of his never-to-be-forgotten Father, than

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to conſent to, or be bound by any Act of Parliament that ſhall alter the Government: They are not his Friends, nor agreeable to him, that would ſpoil the Government, more valuable in his eſteem (as well as his Father's) than a perſonal Reign: That would make him a King in mockery; That conſpire againſt the Government it ſelf, which he will not, he ought not to ſuſtain and endure, as long as there is any Iron and Steel in the hands, or Bloud in the Veins of Loyal *Roman* Catholicks.

He is an equal Prince, and will not take it ſo much to Heart, that he ſees the people of his Nativity not ſtupid Sots, but that they can be ſenſible of the dangers that he urgeth them with, and provide apt remedies againſt the evils which threaten us.

But if theſe Reaſons will not obtain his expreſs Conſent to that Law for his Excluſion, they will be allowed inducements ſufficient enough to paſs it and conclude his Aſſent; for the nature of a Law is, to be firſt reaſonable, and to make thoſe willing that ſhould be conſenting to it as reaſonable and fit, but are not, and to render them obedient and ſubmitted: For this is one of the greateſt benefits of Government, that they that cannot or will not chuſe what is beſt for themſelves, the

Laws

Laws will chuſe for them, with regard to the Publick Good.

For the better clearing the matter of the Conſtitutions of this Realm, in relation to the Succeſſion, I thought it neceſſary to add the ſubſtance of an Act of Parliament yet in force, made 13 *Elizabethæ*.

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13 Eliza-

13 Elizabethæ Cap. 1.

An Act whereby certain Offences are made Treason.

FOrasmuch as it is of some doubted, whether the Laws and Statutes of this Realm, remaining at this present in force, are vailable and sufficient enough for the surety and preservation of the Queens most Royal Person, in whom consisteth all the happiness and comfort of the whole State and Subjects of the Realm: Which thing all Faithful, Loving, and Dutiful Subjects ought and will with all careful study and zeal consider, foresee, and provide for; By the neglecting and passing over whereof with winking Eyes, there might happen to grow the subversion and ruine of the quiet and most happy State and present Government of this Realm (which God defend.) Therefore, &c. to Declare, &c. during her Majesties life, that the Right of the Crown was in any other Person, should be Treason. And such Person that should, during her Majesties Life, Usurp the Crown, or the Royal Stile, Title, or Dignity of the Crown or Realm of England, &c. they, and every of them so offending, shall be utterly disabled, during their natural Lives onely, to have or enjoy the Crown or Realm of England, or the Style, Title, or Dignity thereof, at any time in Succession, Inheritance, or other-

wise, after the Decease of our said Sovereign Lady the Queen, as if such person were naturally dead: any Law, Custom, Pretence, or matter whatsoever to the contrary notwithstanding. After which, these words follow.

And be it further Enacted, That if any Person shall in any wise hold, and affirm or maintain, That the Common Laws of this Realm, not altered by Parliament, ought not to direct the Right of the Crown of England; Or, that our said Soveraign Lady, the Queens Majesty that now is, with and by the Authority of the Parliament of England is not able to make Laws and Statutes of sufficient Force and Validity to limit and bind the Crown of this Realm, and the Descent, Limitation, Inheritance, and Government thereof: Or, that this present Statute, or any part thereof, or any other Statute to be made by the Authority of the Parliament of England, with the Royal Assent of our said Soveraign Lady the Queen, for limiting of the Crown, or any Statute for Recognizing the Right of the said Crown and Realm, to be Justly and Lawfully in the most Royal Person of our said Soveraign Lady the Queen, is not, are not, or shall not, or ought not to be for ever of good and sufficient Force and Validity to Binde, Limit, Restrain, and Govern all Persons their Rights and Titles, that in any wise may or might claim any Interest or Possibility in or to the Crown of England, in Possession, Remainder, Inheritance, Succession, or otherwise howsoever; And all other Persons whatsoever, every such person so hol-

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ding, affirming, or maintaining, during the life of the Queens Majesty, shall be adjudged a High Traitor, and suffer and forfeit, as in Cases of High Treason is accustomed; and every Person so holding, affirming or maintaining after the Decease of our said Soveraign Lady, shall forfeit all his Goods and Chattels.

AN

ANSWER

TO A

BOOK, publiſhed 1679.

Intituled,

A LETTER

FROM A

GENTLEMAN of Quality

In the COUNTRY, to his Friend, &c.

Relating to the Point of SUCCESSION to the CROWN, &c.

BY ſeveral accidents the former ſheets have ſtopt in the Preſs, from a few days after the *Great and Weighty Conſiderations* were publiſhed; and being now ready to come forth, we have a Gentleman of Quality, as he calls himſelf, *undertaking from Scripture, Law, Hiſtory, and Reaſon, to ſhew, how improbable (if not impoſſible) it is to bar the next Heir in the right*

right Line from the Succeſſion, in a Letter to his honoured Friend A. B.

And now after ſo long a time of conſideration, one would think the many men of great Parts and Learning that are depentents on the Duke, ſpirited with zeal and ambition, ſhould have offered all that they have to ſay againſt the Bill for excluding his Royal Highneſs. And this being (as may be reaſonably concluded) the laſt endeavours of the moſt learned and beſt parted men of that Intereſt; This Letter for that reaſon onely, but not for any thing of moment that it offers, deſerves to be conſidered.

We will not follow him from Paragraph to Paragraph, ſince the greateſt part of it is vain and empty, pedantick, bombaſt, and putid affectation.

I ſhall onely draw you up ſhort Summaries of his ſeveral Reaſons, and give them all the advantages they can challenge, and improve them by juſt and natural Inferences: And that I think will be enough of confutation, and a ſufficient countercharm againſt his deceiving the People.

He firſt lays down for a Ground, That the Succeſſion to the Crown of *England* is inſeparable annexed to Proximity and nextneſs of Bloud, by the Laws of God and Nature; And all Statute-Laws contrary to the Laws of God and Nature, are, *ipſo facto*, null and void.

That it is contrary to the Laws of God, he

proves by the Law of God given by *Moſes* to the *Jews* in the 7th of *Numbers*, that directs how the ſucceſſion of Lands ſhould be amongſt the *Jews*; and whatſoever Statute-Laws are contrary to thoſe Laws are null and void, he ſaith.

The conſequence of this Argument is this, That the Laws given by God to the *Jews* are Laws to all Mankind: That our Common-Law and Statute-Law is againſt the Law of God, and null and void, becauſe not agreeable to the Laws of *Moſes*: That the eldeſt Son is not to take by Deſcent the whole Inheritance, but a double portion onely, and that the Crown muſt be diſpoſed of in Deſcents accordingly: That not the firſt Son only, and one Daughter, but all the Daughters of a King, if never ſo many, muſt ſucceed together to the Crown: That no Father can ſell his Patrimony; for that was the Jewiſh Law, and eſtabliſhed in that Chapter he quotes.

He proves it to be a Law of God further, for that God ſaith to *Cain* of *Abel*, *That his deſires ſhall be ſubject, and thou ſhalt rule over him.*

The Conſequence of this, is, that becauſe *Cain* could not kill *Abel*, (notwithſtanding he was to have the Primacy) That *Abel* much more could not kill *Cain* his Elder Brother.

And further he proves that to be a Law of God, becauſe God maketh choice of the firſt-born to be Sanctified and Conſecrated to himſelf.

And therefore it moſt certainly follows, with this Gentlemen, that he which is not the firſt-born

born muſt be ſo too. I wiſh his Royal Highneſs, the ſecond born, the Conſecration of a Prieſt; (which the Text means, notwithſtanding the Text doth not allow it him) ſo that he will not pretend to the Conſecration of a King, which is clearly out of the meaning of the Text.

He ſays, Conſonant hereunto are the Suffrages of the Doctors of the Civil and Imperial Law.

The Conſequent of this is, firſt, That he is not bound to be coherent; for he was before proving the Law of God to be, That the Succeſſion of the Crown is inſeparably annexed to proximity of bloud, and now he tells us of ſome Opinions of Fathers and Doctors that are conſonant thereunto, when they do not at all relate in their Opinions to what he had produced out of *Moſes* his Law. Secondly, It follows, that he is impertinently troubleſome to his Reader, by telling him of the Opinions of great names in this matter, that the Eldeſt Son by ordinary right is to have his Fathers Eſtate in ſome Countries, or that the Crown doth ſo ordinarily deſcend where the Succeſſion is hereditary; he ſhould have ſpared them for another time, when he ſhall ſay ſomething that all mankind doth not agree in. Thirdly, That he is a man of little reading, otherwiſe he would have been inſufferably impertinent by 10000 quotations in this matter. Fourthly, That he is no Civilian; for that in this place he calls the Soveraignty a Fee, when all men agree that a Crown is of that ſort of Inheritances, which

they call Allodiums, that are held ἐκ ἀυτ' ἐκ ΔΙΟ. This would have made a ſwinging Argument for his *Jure Divino*, if he had thought of it, but we will give it them *gratis*. He tells us the Duke of *York* is in the ſame condition as the Eldeſt Son of the King Reigning, though his Brother be King: That the ſecond Son of a King Regent, when the firſt is dead, living his Father, is within the 25 of *E.* 3. that makes it Treaſon to compaſs the death of the King's Eldeſt Son; and that ſuch Second Son is Prince of *Wales*, and Duke of *Cornwal*.

The Conſequence whereof is, that he is very impertinent, or elſe the Duke of *York* is now Prince of *Wales*, and Duke of *Cornwal*, and that he is within the Statute of 25 *Ed.* 3.

This Argument of his he leaves to be further illuſtrated and purſued by the Church-men and Civilians: But leſt they ſhould fail, this Epiſtoler (for I now am well aſſured, that this queſtion and cauſe is to be managed by the Sword, by Maſſacres, and the *French* Plot, and not by Writing) I have adventured, and will proceed to illuſtrate his Arguments, and purſue them into their Conſequences, & leave the Epiſtoler of Quality to be purſued with laughter; for he deſerves no worſe, if it be true that he profeſſeth, that he is a Proteſtant and Lover of the Government.

Now he will, he ſaith, as beſt ſorting with his profeſſion, and with a diſcourſe of this nature, derive proofs from the Authority of the Com-

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mon and Statute-Law of *England*.

From whence it follows, That the Common-Law and Statute-Laws of *England* are proper to be conſulted with, for declaring the Laws of God, and the Laws of Nature; which they never yet pretended to do. And Secondly, it follows from thence, that this Epiſtoler no more underſtands the Common and Statute-Laws of *England*, and what place they are to have in the Conduct of our manners, and guidance of our Conſciences; than doth (as appears by what he hath ſaid before) what is the Law of God or Nature.

He lays it down as moſt evident, *That all the humane Acts and Powers in the World cannot hinder the Deſcent of the Crown upon the next Heir of the Blood; becauſe (though they may hinder the Poſſeſſion and Enjoyment of it) This is a Dowry which the great King of Kings hath reſerved to his own immediate Donation, and hath placed above the reach of a mortal Arm; and mankind can no more hinder or intercept it, than it can the Influences of the Stars or the Heavens upon the Sublunary world, or beat down the Moon.*

The Conſequence of this is, that the man is Lunatick and of inſane memory, and hath forgot and denies what in the ſame breath he affirms: For, he agrees humane Power may hinder the poſſeſſion and enjoyment, and yet it is no more poſſible to hinder the Deſcent, than to ſtop the Influences of Heaven, and to pull down the Moon. Secondly, It follows, that that which is done is im-

impoſſible to be done. Thirdly, That there is no Right at all by Deſcent, nor can be any Deſcent of the Crown; for that it is reſerved, as he ſays, to Gods immediate Donation: And we never yet heard of any immediate Gift or Donation thereof from God. And if the Duke will ſtay until that be done, we moſt ſolemnly declare we will accept him for our King; and he ſhall be a king to all intents and purpoſes (as he terms it;) we will be kinder and juſter to him than his Friends of the ſame perſwaſion with the Epiſtoler, who will give him the Name and Style, and would Abridge him, as they pretend, of the Power and Authority of a King.

He ſays further, That when the Duke is King, that the Legiance and Fidelity of the Subject is due to him by the immutable Law of Nature; from whence it clearly follows, that he muſt ſtay until that time comes: That when he is a Loyal and Foyal King, we are to be his Loyal and Foyal Liege-men and Subjects: For, *Calvin*'s Caſe which he cites, by the general Opinions of all conſiderable Lawyers, is Apocryphal, where it makes Allegiance abſolute, and more extenſive than the Legal Power of Kings. But here he ſubjoyns ſuch loathſom Pedantry, that I cannot but remark it: He ſubjoyns to his mention of *Calvin*'s Caſe, that *Ariſtotle*, Nature's Amanuenſis (as he calls him) agrees with that Caſe, in that he ſaith, Ἀρχηὸς παντὸς μᾶλλον φύσει ἢ βασιλεὺς ἧς βασιλευμένου. and *Seneca*'s *Natura commenta eſt Regem.* But for my promiſe

miſe ſake, I will make no further Obſervations upon him, than by bare repeating of it to expoſe it.

That the King and his Succeſſors are Kings by Nature, he proves; *For that the Statute-Laws do frequently ſtyle the King our Natural Liege-Lord: And for further proof tells us, that in Indictments it is ſet forth, that the Treaſon is committed* contra debitum Fidei & Ligeantiæ quod naturaliter & de jure impendere debet: *And the King in Indictments is ſometimes ſtyled Natural Lord.*

Whence it follows, that we are born under Allegiance; that no man that is born under any form of Government can deny Faith unto it, though he never expreſly ſwore Allegiance. That the King of *France* is not our Natural Lord, neither doth the Oath of Allegiance bind us to that Form of Government, if introduced, becauſe the King was born to no ſuch Kingſhip: Nor is our King a Natural Lord to any Forreigners that come hither; and the Form of the Indictment againſt Forreigners, as the Lawyers know, muſt be in another Form. And further it follows, That in all changes of Government, the word natural is to be adjoyned to Allegiance in all Indictments of Treaſon committed againſt the Government in its ſeveral changes that it may ſuffer; And this all the Lawyers with one voice pronounce.

He ſums up all that he hath ſaid before, thus: *No humane Power can hinder the Deſcent of the Crown upon the Right Heir; the Deſcent makes*

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the King, Allegiance is due to the King by the Law of Nature; The Law of Nature cannot be abrogated by humane Power: That Common-Law is more worthy than Statute-Law, and the Law of Nature more worthy than both. But upon better conſideration of the whole matter, it follows with better Conſequence, That Nature hath made no Laws about Property, nor about Governments; otherwiſe all Laws of Right and Property, and all Governments would have been the ſame; for what ſhe makes are Univerſal, as the Nature of man: Beſides that if he knew where ſhe became a Legiſlatrix, or if this Gentleman could direct us to a view of her Pandects, we ought to accord all our Laws to them. Secondly, That Common-Law is not to be preferred before Statute-Law; For the Judges who declare the Common-Law are not wiſer than Parliaments; and the Common-Law appears ſo bad a Rule, that it requires oftentimes amendment. Thirdly, It follows, that no Legiſlation is Lawful, for that which is to be preferred is beſt, and that which is beſt is to be a Law for ever. Fourthly, That no Allegiance is due to any Prince, but whom the Law appoints, and as the Law appoints: That he that is not King, to him no Allegiance is due. That a humane Power is competent enough to alter as well as make any humane Conſtitution. That which by humane Authority was made, and made alſo deſcendible (for all Crowns are not deſcendible) can be alte-

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red by the ſame Authority in its Deſcent.

The greateſt part of this enſuing Diſcourſe, is, the remembrance of the Tragedies that have been acted upon the Engliſh Nation by our Kings: For we have not onely ſuffered under their bad Government, but they have Uſurpt one upon another, and we have been infinitely miſerable by being drawn into Wars, to diſpute which of them ſhould Govern us after their own manner and faſhion. If this Epiſtoler had had any regard to mankind, any bowels and commiſeration for the vaſt Miſeries and Calamities which we have ſuffered thereby, except he had depreſſed all mankind ſo far below this Jure-Divinity Head, as if they were no more conſiderable than a ſwarm of Flies, and ought to periſh by Thouſands, to the Pleaſure, Luſt and Ambition of any that is big enough to pretend to a Crown; he had not here talked ſo glorioufly of the Matter of Succeſſion; he would have put the Crown in Cypreſs, and vail'd its ſplendour with a mourning dreſs; he would not have talked of Pearls and Oriency, (in his fooliſh ſtyle) Jewels and Gems of Magnitude.

But, if they, by Cruelty and Treachery have murdered one another, and uſurpt upon the Legal Right of Succeſſion, and did keep the people in a ſtate of War for Centuries of years; ſhall not we exclude a ſingle Perſon from the Succeſſion, to prevent more and greater Miſeries to be

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executed perhaps in one year upon this poor Nation, than the former Uſurpations did produce in Centuries of years?

But let him attempt the Crown, notwithſtanding an Act of Parliament for his Excluſion, he is all that while but attempting to make us miſerable; if he be not excluded, he doth it certainly: We exclude onely his Perſon, not his Poſterity; and we will not intail a War upon the Nation, though for the ſake and intereſt of the Glorious Family of the *Stuarts*.

The next Argument he produceth is this, *viz.* that in Acts of Parliament the Right of Succeſſion is called a Natural Right, and conſequently that it is unalterable. The conſequence of this Argument is, that a Right by Birth is a natural Right, and that truly; for men are born by nature. Secondly, It follows, that no man hath a natural Right by birth to the Inheritance of his Father, or that his Father cannot give it from him, or he himſelf forecloſe himſelf by Treaſon and Felony. Or elſe it follows, that notwithſtanding Princes of the Bloud ſucceed by the right of their Birth, which is a natural Right, or a Right by Nature; they may be ſet aſide, and excluded the Succeſſion to the Crown upon as great reaſon as we have for this Bill of Excluſion.

His Law-*Farrago* of Statutes that have been adjudged void, becauſe unreaſonable and impoſſible, concludes, that a Statute-Law in a matter

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that is not reaſonable and impoſſible, is a good and binding Law; and therefore he ought to have a profound veneration and deference to it (in which we uſe onely his own words in this matter, which are the leaſt fooliſh) when it paſſeth.

But if he cannot find the reaſonableneſs of this Bill, in what we have offered, we may further conclude, that nothing will convince him but French Auxiliaries, and a Stack of Faggots in *Smithfield*. If this Act be impoſſible to be executed, we muſt conclude that it is in the power of his Party to execute our Laws, Religion, and Government, and to Aſſaſſinate the Nation. We wiſh onely, on the behalf of our Religion and Government, that we had as great aſſurance that the Bill would paſs into a Law, as the reaſonableneſs is evident.

But this Epiſtoler (whoſe Province he ſaith is Law) nextly undertakes to ſay, *That the Succeſſion of the Crown to the next Heir of the Bloud, is a Fundamental and Primary Conſtitution of this Realm, and indeed the Baſis and Foundation of all our Laws. The Succeſſion of the Crown to the next Heir of the Bloud, is one of the higheſt, eſſential, and undivided Rights of the Crown. That no Perſon or Community can give away, or transfer, a thing which they never had to give. Of this nature is the Right of Succeſſion to the Crown, which is not the gift of a man, but the immediate Dowry*

(that

(that Word he is fond of) *of God, Nature, and the immutable Customs of the State.*

Whence it follows, that God, Nature, and the immutable Customs of State, met together once upon a time about this matter; or that the immutable Customs of State did sometime consult God and Nature about this matter, and agreed their Sentiments. Or,

God, and Nature, and immutable Customs of State are all one: That Customs of State are made without People: That Customs of State are as immutable as God and Nature: That God and Nature cannot alter that which is once a Custom: That God cannot be heard, though he interposeth with all the Obligations that he lays upon us to Humanity and Justice, from his own Philanthropy and Justice, to protect the whole Body of an innocent Nation, from, destroying Zeal and wasting Superstition; nor Nature her self be heard in her close injunctions of self-preservation: But immutable Custom a more powerful Supream, must prevail against God and Nature, though at first they stuck together in making this Primary Constitution the Basis and Foundation of all Laws: for nothing else was certainly in the mind of God and Nature so much, as to set up a Royal Family amongst us a part of Mankind. And to shew a particular kindness to the English People (for he hath not dealt so with every Nation:) That he doth not certainly think us worthy of any

Laws,

Laws, any Lives or Eſtates, if we do not accept of this ſingular favour; nor if we do accept, wo worth us miſerable people. But Laws, it ſeems, we can have none without it; for that's the true Baſis and Foundation (ſaith he) of all Laws. And this follows with good reaſon; for the Succeſſion of the Crown to the next of Bloud, is one of the higheſt, moſt eſſential, and undivided Rights of the Crown: for it is clear we muſt loſe our preſent King, and he be divided from his Life and Crown, rather than the Succeſſion be divided from the next of Bloud; and after that, what matters it what becomes of the People, of no regard certainly, of no regard at all, nor to be conſidered, where the Rights or pretences of Kings are concerned.

And further, becauſe Kings cannot alienate the Crown, which doth not lie in Dominion, but in Truſt; not in Property, but in care; for *Officium eſt imperare, non regnum:* And becauſe that people cannot be ſold like Droves of Cattle: therefore it is with clear and irrefragable reaſon infer'd by this Letter-writer, That the King muſt not live; that he cannot remove an irreſiſtible temptation againſt his own Life: And we muſt receive a King that hath devoted us a fat Sacrifice to his cruel Superſtition, as his party hath our King, that they may more eaſily come at us.

Laſtly, he ſaith, *That the right Heir of the Crown cannot be bar'd or excluded by Act of Parliament; becauſe the Acceſſion and Deſcent of the Crown in an inſtant abſolutely purgeth and diſchargeth all Obſtructions and Incapacities whatſoever, created by the ſame Act of Parliament.*

From whence it follows, that the Earl of *Danby*, if he were the next Heir, might ſucceed, if he ſhould be attainted of Treaſon of State by Parliament; whereas if the King cannot pardon him, as he cannot, he could not in that caſe of the deſcent of the Crown pardon himſelf. The Heir of the Crown attainted, upon the devolving of the Crown upon him, is therefore purged from the Attainder, becauſe he can pardon himſelf, and is intended to do ſo; but a Treaſon of State can never be pardoned by the King. Our young Lawyer knows well enough, that an incapacity by Act of Parliament to execute an Office growing upon a moral diſability of executing the truſt of that Office, is not in the Kings power to pardon. Secondly, from hence it follows, that that Attainder which leaves a capacity to obtain a Pardon of the King, doth not at all differ from an Attainder that excludes all capacity from the King to pardon, and which in the Conſtitution of the Government he hath no power to pardon; ſuch are all Treaſons of State where the King is not the *Pars læſa*, and where it is not a private wrong, a ſingle crime, but the at-

attempt is upon the whole Government. Thirdly, hence it clearly follows, that he that is no King, and upon whom the Crown can never deſcend, (as it will not if this Bill paſſeth into an Act) he being without the Imperial Crown, without right, and without poſſeſſion of it, is yet a King. That there is no difference between an Act of Parliament which leaves the Succeſſor to a poſſibility of being purged from the Attainder it makes; and that Act of Parliament which leaves no ſuch poſſibility, but doth moſt abſolutely and expreſly exclude him.

His Poſitions muſt therefore be falſe, and his Arguments not concluding, from which ſuch notorious falſhoods and abſurdities are naturally infer'd.

Inſtead of further argument, he tells us a matter of Fact, *of an Act of Parliament made* 28 H. 8. cap. 7. *to render Queen* Elizabeth *incapable of Succeſſion: And that ſhe notwithſtanding got into the Throne: And that Sir* Nicholas Bacon (*who had conſulted the Judges*) *told the Queen, that there needed no formal Repeal of the ſaid Act; for that* Corona ſemel ſuſcepta, omnes omnino defectus tollit.

The conſequence of this is, that if the Duke can, notwithſtanding an Act for his Excluſion, get into the Throne, he will; and ſo let him. Se-

condly, that a King *de facto*, though a bad one, is not to be removed at the expence of a Civil War; that it is madneſs to part with a good one, when in poſſeſſion, and cruelty to the People.

Detrahere Dominum urbi ſervire paratæ.

But afterwards in the 35 of *Henry* the Eighth, the Crown was limited by Act of Parliament, in caſe the King and Prince *Edward* ſhould die without Heirs of either of their Bodies, to the Lady *Mary* and the Heirs of her body; and for want of ſuch Heir, to the Lady *Elizabeth* and the Heirs of her body.

We are no ways concerned in the juſtification of our Bill, to approve of the humorous Caprice of *Henry* the Eighth, and the arbitrary Laws that he made in his time about the Succeſſion: they are inſtances of his haughty Government, that he impoſed upon Parliaments, and that he took the Crown to be at his diſpoſe, and transferrable at his pleaſure, as his Money and Lands: a great indignity to Mankind, and an injury to the nature of Government! But that the Succeſſion of the Crown is the right of the whole Community, their Appointment, their Conſtitution, and Creature in Parliament, and alterable as far the Bill deſigns, and for ſuch reaſons as preſſeth and urgeth in the Caſe of the Duke. Whether this, I ſay, is not to ſatisfaction proved in theſe Sheets;

Sheets; and whether this Epiſtoler hath produced any ſhadow of Reaſon to prove the contrary, let the World judge: And whether he hath given us any thing for reaſon, but the inſignificant bluſter of Words, canting Language, and pedantick Nonſence, which will never paſs with any man of the leaſt ſpark of ſence for Argument.

Neither do we place the Right of Succeſſion to Government in the ſame rank with private Inheritances; nor ever were they governed in any Country by the ſame Rules; though this Epiſtoler hath produced the Laws of God by *Moſes* to the *Jews* (which was onely to govern private Inheritances amongſt them) to prove the unalterable Succeſſion of the Crown amongſt us: which is ſo wild an impertinence, wherewith he begins his Letter, that he will be aſhamed of it when he reviews it, and conceal his name for ever with care.

That there is one Rule for the Succeſſion of the Crown, and another for the Succeſſion of private Eſtates, is from theſe Reaſons; That private Inheritances are diſpoſed of in Succeſſion, according to the preſumed Will of the *Decedens*, which is collected from the general Opinion and Practice of the people in diſpoſing of their Eſtates by Settlements; or by their Wills and Teſtaments, in caſe of Allodiums: or elſe the Succeſſion goes according to the direction and

limitation of the Lord made in the firſt collation of the Fee in caſe of Fees. But the Deſcent and Succeſſion of the Crown is governed and directed by the preſumed Will of the People: And that preſumption of the Peoples Will is made by meaſuring and conſidering what is moſt expedient to the publick good, or by the expreſs limitation of the People in their conferring the Royal Dignity. In Allodiums, in defect of Heirs, the Inheritance belongs to the Soverain Power, as a thing that is *Nullius in bonis*, and hath no owner. In Fees, when the Family is extinct it Eſcheats to the Lord of the Fee.

In Crowns, upon the extinction of the Royal Family, it belongs to the People to make a new King, under what limitations they pleaſe, or to make none: for the Polity is not deſtroyed if there be no King appointed; and conſequently in caſe of this ceſſer or diſcontinuance of the *Regnum*, there may be Treaſon committed againſt the people.

That the Succeſſion of the Crown is directed according to the preſumed Will of the People, and collected from what is moſt expedient, gives us the reaſon why one Daughter or Female of the next degree ſhall ſucceed to the Crown, and not all, if more than one; whereas a private Inheritance is equally divided amongſt them all: For it is the Intereſt, and therefore the preſumed Will of the people, that the Kingdom ſhould continue undi-

undivided. The ſtrength of the Kingdom is preſerved in being continued united, and the Peace and Concord of the People thereby eſtabled.

That a Son by the Second *Venter* ſhall ſucceed to the Crown, which is not allowed in private Eſtates, is, becauſe one ſo born is equally of the Family of his Father; and the expectation of the people as great from him, being deſcended from that glorious Perſon upon whom the Crown was conferred by the people, or who after he had got into the Throne, obtained the ſubmiſſions of the People. The ſame reaſon admits an Alien born, though he be eſtranged from us by his Birth.

Eſt in Juvencis, eſt in equis patrum virtus.

Though what I have ſaid in this matter, is ſo obvious, that no conſidering man can eſcape theſe thoughts, yet I cannot think it impertinent to add it here, to clear what I have laid down in the precedent Sheets, as an undoubted truth, and evident in it ſelf; *That the Succeſſion to the Crown is the peoples Right.* But there is nothing, I perceive, to be allowed clear and evident, when we live in an Age wherein Fools and moſt ignorant perſons will undertake, by the Liberty of the Preſs, to print and publiſh to the world their crude thoughts, and with great aſſurance offer their uncouth Opinions with aſtoniſhing preſumption.

ption. Beſides, to the reaſonableneſs of this Doctrine, it is agreeable to the Illuſtrious *Grotius*, *De Jure Belli & Pacis*, Lib. 2. cap. 7.

And nothing follows from his collected Law-caſes about the different Rules of Succeſſion of the Crown from private Fees, but that he is a very young Lawyer, or an old ſenſeleſs Jobber of Law-Caſes.

But I hope that all men that read him, will with reſentment think themſelves uſed with ſcorn, when they ſee what frivolous Fellows attempt upon them to deceive them; and will be fully convinced, that the Bill is reaſonable, juſt, and fit, ſince they have nothing better to object againſt it.

The laſt endeavour of the Epiſtoler is to remove the Authority of Parliaments, and the Act made in the Thirteenth of Queen *Elizabeth*. The Words of which are printed at the cloſe of the Papers againſt the man of *Great and Weighty Conſiderations*. Our caſe is not in its reaſons unparallel to thoſe that introduced that Law, and occaſioned the making of that Declaration; but whatever was the particular Reaſon, the Declaration of that Parliament in that Act is general, and therefore it is an Authority not to be impeached, to prove that there is ſuch a power to alter the Succeſſion of the Crown, for great Ends, and weighty Reaſons, and juſt Cauſes. Beſides, that ſuch a power is lodged in the Parliament, is clearly proved by us from the nature of Government,

ment, in the foregoing Sheets: As alſo, that ſuch a power will not be abuſed by uſing it in this Bill of Excluſion, of which I hope no body upon the reading of them will retain any longer any manner of doubt. But I cannot, before I have done, but take notice of his little Artifice, in that he doth ſuggeſt, that by the Act of Parliament of the Thirteenth of Queen *Elizabeth*, *cap.* 1. the Title of the Family of *Stuarts* is excluded; when it is evident by the words of the Act, that the Diſability there enacted is only perſonal. And his ſtory of Monſieur the Duke of *Anjou* deſigning then to marry the Queen, is a falſe and malicious inſinuation, to hurt the memory of that excellent Princeſs. And conſequently, that King *James* and his Race had, and have, notwithſtanding the validity of that Act, a good Title to the Crown: And that the validity of that Act may be maintained, without derogation and injury to his Majeſtie's ſacred Title, whom God long preſerve.

A ſhort Hiſtorical Collection touching the SUCCESSION *of the* CROWN.

WHether the Hiſtory of the Succeſſion of the Crown will allow ſo good and clear an Hereditary Right, *Jure humano*, as we have yielded in the precedent diſcourſe, the Reader will beſt judge by the ſhort Hiſtorical Collection touching the Succeſſion hereto ſubjoyned.

In the Heptarchy there was no fixt Hereditary Right, one King tripping up the heels of another, as he had power, till one got all.

After that, *Alfred*, Baſtard-ſon to *Oſwine*: *Adelſtane*, Baſtard-ſon of *Edward* the Elder: *Edmund*, Surnamed the *Martyr*, Baſtard-ſon to King *Edgar*: *Harold*, Surnamed *Harefoot*, Baſtard-ſon to *Canute*, wore the Imperial Crown of *England*.

But a Law was made under the *Saxon* Monarchy, *De Ordinatione Regum*, directing the Election of Kings, and prohibiting Baſtards to be choſen.

Edward the Confeſſor was no King *Jure Hæreditario*; but the right was moſt indiſputably at firſt in *Edward* Son of *Edmond Ironſide*, Father to *Edgar Etheling* his Nephew, during his life; and after his deceaſe, in that *Edgar*, who was Nephew alſo to the Confeſſor.

William

William the Firſt, called the Conquerour, was a Baſtard, and had no right but from his Sword, and the Peoples Submiſſions, and their Electing him.

William Rufus was elected againſt the right of his Elder Brother *Robert* then living.

Henry the Firſt was made King, *favente Clero & Populo*, his Brother *Robert* ſtill living, whoſe Eyes were after put out at *Cardiff*-Caſtle in *Wales*.

King *Stephen* was elected *à Clero & Populo*, and confirmed by the Pope, and *Maud* Daughter of *Henry* the Firſt excluded.

Henry the Second came in by conſent, yet he had no Hereditary right; for his Mother *Maud* the Empreſs, Daughter and Heir to *Henry* the Firſt, was then living.

King *John* had an elder Brother *Jeoffery* Earl of *Britany*, who had Iſſue *Arthur* and *Elianor*, which ought to have ſucceeded before him; but he *Arthur* his Eldeſt Brother's Son living, was elected *à Clero & Populo*; and being divorced from his Wife, by his new Queen had *Henry* the Third.

Henry the Third was confirmed and ſetled in the Kingdom by the general Election of the people; *Elianor*, Daughter to *Jeoffrey* the elder Brother, ſtill living.

Roger Mortimer Earl of *March*, Son of *Edmund* by *Philippa* Daughter and Heir of *Lionel* Duke *Clarence*, a younger Son of *Edward* the Third, was

was in the Parliament 9 *R.* 2. declared Heir Apparent of the Crown; which could not be but by force of an Act of Parliament.

Henry the Fourth came to the Crown by way of Election; and in his time, *viz.* in the eighth year of his Reign, was the first Act of Parliament made for Entailing the Crown with Remainders.

By vertue of which, his Son *Henry* the Fifth became King, and after him *Henry* the Sixth.

In *Henry* the Sixth his time, *Richard* Duke of *York* claimed the Crown; and an Act of Parliament was made 39 *H.* 6. that *Henry* the Sixth ſhould enjoy the Crown for his life, and the ſaid Duke and his Heirs after him. After which, King *Henry* raiſes an Army by the aſſiſtance of the Queen and Prince, and at *Wakefield* in Battle kills the Duke; for which, 1 *Edw.* 4. they were all by Act of Parliament attainted of Treaſon; and one principal reaſon thereof was, for that the Duke being declared Heir to the Crown after *Henry* by Act of Parliament, they had kill'd him: which Act of Attainder was 1 *H.* 7. repealed, and the Bloud of the King, Queen, and Prince reſtored, in terms of diſgrace and deteſtation of ſo barbarous an Attainder, *Rot. Parl. Anno* 1 H. 7.

Edward the Fourth ſucceeds upon the death of *H.* 6. by vertue of an Act of Parliament made in the time of *H.* 6. for entailing the Crown as Son and Heir to the Duke of *York*.

Edward the Fifth ſucceeded by vertue of the ſame Act of Entail. *Ri-*

Richard the Third having got the Crown, he was confirmed King by Act of Parliament; which likewiſe Entail'd the Crown: which was done upon two reaſons pretended: Firſt, for that by reaſon of a precontract of *Edward* the Fourth, *Edward* the Fifth his eldeſt Son, and all his other Children, were declared Baſtards. Secondly, for that the Son of the Duke of *Clarence*, ſecond Brother to *Edward* the Fourth, had no right, becauſe the Duke was attainted of Treaſon by a Parliament of *Edward* the Fourth. The Act of Parliament for Baſtardizing the Children of *Edward* the Fourth, was in force until repealed in the time of *Henry* the Seventh, after his Marriage with *Elizabeth* the Daughter of *Edward* the Fourth.

Henry the Seventh comes in by no legal Title: Firſt, becauſe *Edw.* 4th his Daughter was then living. Secondly, his own Mother was then living. In his firſt Parliament the Crown was Entail'd upon him and the Heirs of his body. And obſervable it is, that after the death of *Elizabeth* his Queen, Daughter and Heir to *Ed* 4th, there is no notice taken of any right which was pretended to by *Hen.* 8. during his Fathers life, as being Son and Heir of his Mother, who had the legal Right to the Crown by an ordinary right of Succeſſion.

Henry the 8th Succeeded, who did (as all his Laws ſpeak) derive his Title to the Crown by the Fathers ſide, and not by the Mothers. In his

his Reign the Crown was Entail'd thrice by Act of Parliament, Confirm'd by the general Oaths both of the Spiritualty and the Laity; and it was made High Treaſon to refuſe ſuch Oaths; and ſeveral Attainders were in his time by particular Acts of Parliament of ſeveral perſons who oppoſed ſuch limitations of the Crown, and the authority of the Laws that made them.

But the great Law of the three was made in the 35th year of his Reign, *Cap.* 1. whereby power was given him to give and diſpoſe by his Letters Patents, or by Will, the Imperial Crown of the Realm, to remain and come after his death, for want of lawful Heirs of Prince *Edward*, the Lady *Mary*, and the Lady *Elizabeth*, to ſuch perſon or perſons, in remainder or reverſion, as ſhould pleaſe his Highneſs. In which Act there was a Clauſe, that made it High Treaſon to ſpeak or write againſt that Act, or to go about to annul or repeal it. Beſides, there is another Proviſo in that Act, That if the Lady *Mary* ſhould not keep ſuch conditions which the King ſhould declare by his Letters Patents or laſt Will, the Imperial Crown ſhould come to the Lady *Elizabeth:* And if the Lady *Elizabeth* ſhould not obſerve the ſame, then the Crown was to go to ſuch perſon as the King by his Letters Patents, or laſt Will, ſhould limit and appoint.

By virtue of which limitation in the Act of Parliament afore-mentioned, *Edward* the Sixth ſucceeded to the Crown, and after him Queen

Mary

Mary: in whoſe Reign, in an Act of Parliament for Confirmation of the Articles of Marriage between her and *Philip* of *Spain*, the Crown was again Entail'd; but ſhe dying without Iſſue, the Lady *Elizabeth* became Queen, who had been declared a Baſtard (as well as her Siſter *Mary*) in the life of their Father; and therefore ſucceeded to the Crown by force of the Entail made in the 35 *H.* 8. *Cap.* 1.

Purſuant to theſe Preſidents in fact, in the 13 year of the Reign of Q. *Eliz.* an Act of Parliament was made, declaratory of the power of Parliament in the limitation of the Succeſſion, which made it highly penal to deny the Authority of an Act of Parliament for the limitation of the Crown. Several perſons in her time were proceeded againſt upon that Act, and had the Judgement of Traytors, and as Traitors executed for being contrary to that Law.

This Queen dying, King *James* ſucceeded, who was (as the Statute of Recognition made in Parliament the firſt year of his Reign, declares) lineally, rightfully, deſcended of the moſt excellent Lady *Margaret* eldeſt Daughter of the moſt renowned *Henry* the 7th, and the high and Noble Princeſs Queen *Elizabeth* his Wife, eldeſt Daughter of King *Edward* the 4th, the ſaid Lady *Margaret* being eldeſt Siſter of King *Henry* the 8th, Father of the High and Mighty Princeſs of famous memory *Elizabeth* late Queen of *England*.

It is further obſervable, that upon the Marri-

age

age of Queen *Mary* to King *Philip* of *Spain*, both the Crowns of *England* and *Spain* were entailed; whereby it was provided, that of the several Children to be begotten upon the Queen, one was to have the Crown of *England*, another *Spain*, another the *Low Countries*: The Articles of Marriage to this purpose were confirmed by Act of Parliament and the Popes Bull.

And by that Act of Parliament for confirming the Articles of Marriage, *Philip* was created King, and did exercise Soverain Authority, and particularly in making Laws together with the Queen; the Stile of the Soveraign Assent to Bills in Parliament in their time being, *Le Roy & la Roigne les veulent.*

And likewise for that it was agreed by the States of both Kingdoms, and the *Low Countries*; it is therefore probable, that it was the universal opinion of the great men of that Age, That Kings and Soveraign Princes, by and with the consent of their States, had a power to alter and bind the Succession of the Crown.

FINIS.

ERRATA.

PAge 226. line 9. read *committed*, for *omitted*. p. 249. r. *priorem & idem*. 252. l. 1. after *reaſon*, add *And*. 258. l. 22. r. *Talked*. 272. r. *congruum & conſentaneam*.

PREFACE.

Page 2. l. 4. r. *hurt their*.

POSTSCRIPT.

Page 7. l. 2. r. *foil'd*. p. 29. l. ult. r. *thereof*. p. 43. l. 20. after *ſelf*, r. *it*. p. 45. l. 12. for *de* r. *do*. p. 57. l. 6. r. *dream of a ſhadow*. l. 61. r. θεηγενοι, r. *Gods we*. p 63. r. *Lampada*. p. 72. l. 24. r. *by the State*. p. 74. l. 24. r. *pretended to, uſed or exerciſed*. p. 83. r. *Mogol*. p. 94. r. κρωλίσεις. p. 104. l. 13. after *retain, a Comma wanting*. p. 124. l. 12. r. *intended*. p. 139. l. 3. r. *that we will not*. l. 23. dele *ſo*. p. 144. l. 24. r. *both doth*. p. 169. l. 3. r. *what they fell ſhort of, and for what in the grace of God*. p. 187. l. 11. r. *than he doth*. p. 193. l. 1. r. *unreaſonable*. l. 6. r. *when it paſſeth into a Law*. l. 18. *reaſonableneſs thereof*.